

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DAVID AND ORA BURTON,)

Plaintiffs,)

VS.)

CASE NO. 94-2202-JWL

R.J. REYNOLDS TOBACCO CO.,)

and)

THE AMERICAN TOBACCO CO.,)

Defendants.)

DEPOSITION OF JAMES KIRBY MARTIN, Ph.D.

(PART 2)

February 23, 1996

Job No. 32291

UNITED
REPORTING INC

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1 Q. (BY MR. LEYH) Professor, let me ask if
2 you agree with this: "Before the early
3 1950s, there was no reliable scientific
4 evidence suggesting that cigarette smoking
5 caused laryngeal cancer or lung cancer in
6 smokers"?

7 MS. McDOLLE: Can I hear that
8 again?

9 Q. (BY MR. LEYH) "Before the early 1950s,
10 there was no reliable scientific evidence
11 suggesting that cigarette smoking caused
12 laryngeal cancer or lung cancer in
13 smokers."

14 A. There are perpetual references in the
15 literature, but the word there is
16 "scientific," what we define as
17 scientific evidence.

18 Q. You don't have an opinion whether or not
19 that is true or not?

20 A. I can tell you there was a lot of
21 anecdotal information that was available.
22 If we're talking about systematic
23 scientific inquiry -- that statement may
24 be correct if we're talking about
25 systematic scientific inquiry.

1 Q. All right. I'm going to read you another
2 statement. "In the early 1950s and
3 mid-1950s, respectively, evidence
4 accumulated that was sufficient to raise a
5 scientific concern that cigarette smoking
6 may be related to lung and laryngeal
7 cancer."

8 A. Oh, I think that concern was there long
9 before the 1950s.

10 Q. So you agree that it was there in the
11 Fifties, but think it was also there
12 earlier?

13 A. Yes.

14 Q. One more -- well, just one more. By the
15 mid- and late 1950s, respectively, there
16 emerged a bona fide scientific controversy
17 as to whether cigarette smoking caused
18 lung cancer and laryngeal cancer?

19 A. Yes, I think that is correct.

20 Q. And did there in the 1960s, was there a
21 bona fide scientific controversy in the
22 1960s as to cigarette smoking caused lung
23 cancer and laryngeal cancer?

24 A. I think that debate was probably pretty
25 well over by the time of the Surgeon

1 General's report.

2 Q. In 1964?

3 A. Yes.

4 Q. And who won the debate?

5 A. Well, I think we all know who won the
6 debate.

7 Q. Why don't you tell us?

8 A. Whether it should have been won that way
9 or not, I don't know. I suppose that
10 those scientists who argue that we
11 shouldn't look at any other factors
12 besides cigarettes won the debate. And I
13 think I indicated those sources much
14 earlier on, those who had talked about
15 pollution in the air, internal combustion
16 engines, factories belching out smoke,
17 various chemical compounds that were being
18 introduced into our environment, so on and
19 so forth.

20 Q. Name me a scientist that felt that we
21 should not look at any other factors.

22 A. A scientist who would say that we
23 shouldn't look at any other factors, I
24 would say and I m not sure whether we
25 would call him a scientist or not, but I

1 would put E. Cuyler Hammond in that
2 category. He certainly never looked at
3 any other factors.

4 Q. Who is he?

5 A. He was the major figure

6 Q. You said Hammond?

7 A. Hammond.

8 Q. Who else; anybody else?

9 A. Well, I can't be sure of what they said
10 because I haven't studied that question,
11 but --

12 Q. Well, you just told me that --

MS. McDOLLE: Wait a minute.

13 Let him finish.

14
15 Q. (BY MR. LEYH) -- the ones who won the
16 debate were those who said you shouldn't
17 look at any other factors other than
18 cigarette smoking.

19 MS. McDOLLE: Let's get the --

20 Q. (BY MR. LEYH) You just said that, didn't
21 you?

22 MS. McDOLLE: Let's get the
23 last answer back. Let him finish,
24 and then he can answer the next
25 question. Jim, think about the

1 last answer. He cut you off.

2 THE WITNESS: What was the
3 last question?

4 Q. (BY MR. LEYH) The last question was --

5 MS. McDOLE: Let's have her
6 repeat it.

7 MR. LEYH: No, that's too
8 time consuming.

9 Q. (BY MR. LEYH) Can you think of any other
10 person --

11 MS. McDOLE: That's another
12 broken promise.

13 Q. (BY MR. LEYH) Other than the one you've
14 mentioned who said that as of 1964 we
15 ought not look at any other factors other
16 than cigarette smoking as a cause of lung
17 cancer?

18 A. Well, I think that's a bit of rephrasing
19 of what --

20 Q. Well, the record will reflect --

21 MS. McDOLE: Just a minute.

22 Let him finish his answer.

23 A. I think we're talking about two different
24 things. There is a scientific medical
25 debate in the Fifties about the sources of

1 lung cancer, and the way that the debate
2 comes out in 1964 through the Surgeon
3 General's report is that these other
4 factors may be interesting but they are
5 not worth pursuing. That does not mean
6 that individuals didn't think there may
7 have been other factors that would be a
8 source of lung cancer, but they said
9 smoking was, as I believe it says on the
10 packs today, smoking causes lung cancer.

11 Q. (BY MR. LEYH) Are those individuals who
12 said in 1964 that other factors may be
13 interesting but they shouldn't be pursued?

14 A. Those factors that I named from the 1950s.

15 Q. Okay. Did they also say that no other
16 factor other than cigarette smoking ought
17 to be pursued?

18 A. They wouldn't want to say that because
19 that would put them out of business.

20 Q. They didn't say that, did they?

21 A. No.

22 Q. Do you have any reason to believe they
23 believed that?

24 A. Well, they haven't exactly been in hot
25 pursuit since 1964.

1 Q. Who are you talking about?

2 A. The scientific community.

3 Q. What do you mean they "haven't been in hot
4 pursuit"?

5 A. Well, there are various theories that
6 float out and about, about what causes
7 cancer and what causes lung cancer. And
8 from what I read in the newspaper, and I'm
9 certainly no authority on this subject,
10 many individuals now, today, talk about
11 certain kinds of genetic predispositions
12 with respect to cancer in general. I
13 presume that might apply to lung cancer in
14 particular.

15 Q. Other than your work on this case, have
16 you ever done an investigation, historical
17 study, of the risks, of the health risks
18 of cigarette smoking?

19 A. Besides working on this case?

20 Q. That's right.

21 A. Well, this isn't the only case I've worked
22 on, so I would have to answer no, because
23 I'm not a medical scientist, number one;
24 and number two, questions that I have been
25 asked to look at have to do with the

1 awareness issues.

2 Q. So you've never done a historical study of
3 the scientific community's belief about
4 the risk of cigarette smoking; is that
5 correct?

6 A. I've never done a systematic study, no.

7 Q. You've read the newspaper, but you're not
8 an expert on that?

9 A. I've also read a historical record with
10 respect to what the scientists were
11 debating in the Fifties and Sixties.

12 Q. Would you identify what we've marked as
13 Exhibit 3?

14 A. Yes, that's my general presentation to
15 Paul Koethe and Steve Kaczynski, dated
16 November 16, 1995, when we met in
17 Houston. They asked me to prepare a
18 summary of what my findings were to date
19 in regard to the questions that I was
20 asked to investigate relating to this
21 case.

22 Q. Was that the first written report or
23 summary you provided to the lawyers for
24 the tobacco companies?

25 A. Yes.

1 Q. How long did this meeting last?

2 A. I'm going to guess. I think I would say
3 approximately three hours. No, let me
4 change that, four hours. I think we
5 started around 8:00 a.m. and ended around
6 noon.

7 Q. And did they ask you to address points
8 other than those raised in this
9 November 16th report, in your expert
10 report?

11 A. Points other than those raised?

12 Q. Yes. Did they ask you to write your
13 expert report to include matters that you
14 didn't include in Exhibit 3?

15 A. No.

16 Q. Did they ask you to not address in your
17 expert report matters you did address in
18 Exhibit 3?

19 MR. KACZYNSKI: Do you want
20 to see Exhibit 3?

21 THE WITNESS: I think I
22 remember what it is.

23 A. (Witness examines document.) No, I can't
24 be -- I would say, no. I can't think of
25 anything.

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1 Q. (BY MR. LEYH) Okay. You say here in your
2 "Conclusions" section, Page 5, "Only the
3 deaf, dumb, halt, and idiots would not
4 have known about this controversy, both
5 over definition of cigarettes (addictive,
6 et cetera), and possible health
7 consequences of smoking."

8 Is that a statement that refers to
9 the public awareness in the 1950s?

10 A. I guess.

11 Q. You wrote it didn't you?

12 A. Well, I punched it out on the computer. I
13 guess I did, didn't I? Yes.

14 Q. So does it refer to the public awareness
15 in the Forties?

16 A. Well, I'm sure that what I meant by that
17 was referring to the massive amount of
18 coverage given to the health issues as
19 they were being presented to the public in
20 the 1950s.

21 Q. Okay. So it doesn't apply to the Forties?

22 A. It doesn't apply to the Forties?

23 Q. That's my question.

24 A. It could apply to the Forties.

25 Q. Tell me if it does. In the Forties, would

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in

EXHIBIT

- 1 you would have to be deaf, dumb, halt, or
2 an idiot to not have known about the
3 controversy?
- 4 A. If you went to public schools, you knew
5 about the health issues. Whether you knew
6 about the controversy or not, I don't
7 know. The controversy builds into the
8 1950s. The controversy took place in the
9 1950s. So if you're talking about the
10 1940s, it's a little bit difficult to --
11 I'm sure I must have been referring to the
12 controversies there. I must have been
13 referring to the 1950s.
- 14 Q. You're actually referring to two
15 controversies, that over the definition of
16 cigarettes and that over possible health
17 consequences of smoke; is that right?
- 18 A. Whatever the opening two questions that
19 are listed there, which are the two that I
20 was asked to --
- 21 Q. Well, let me show you the conclusion and
22 ask you if I've correctly stated the two
23 controversies that conclusion refers to.
- 24 A. That's what they refer to.
- 25 Q. Okay. It's your testimony that those

1 conclusions do not apply to the Forties?

2 MS. McDOLE: That's what he
3 said.

4 A. That's not what I said. I said there was
5 a controversy. There was no controversy
6 in the 1940s; therefore, so that we're
7 perfectly clear on this, this refers to
8 the 1950s.

9 Q. (BY MR. LEYH) I understand.

10 A. This says nothing, there is no comment at
11 all about the 1940s.

12 Q. Right. My question was, professor,
13 whether or not that same statement could
14 be made about the 1940s. I believe you've
15 said, "no." Is that a fair description of
16 what we've heard in the last few minutes?

17 A. Well, I hate to say no or yes on
18 everything because life really isn't that
19 simple when it gets down to it, and every
20 good historian knows that.

21 Q. So what's your answer?

22 A. Some portion of that statement could apply
23 to the 1940s. I just said that anybody
24 who went to the public schools and was
25 required to take health education courses

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- 1 would have known that cigarettes were
2 habit forming, would have known that
3 cigarettes could cause health problems,
4 and we could go on and on about that.
- 5 Q. Look at it and tell me what portion might
6 apply to the Forties?
- 7 A. Anybody who went to the public schools and
8 had health courses in the public schools
9 would have had information presented to
10 them about the habit-forming qualities of
11 cigarettes, and they would have had
12 information presented to them about
13 possible health consequences of smoking,
14 anybody.
- 15 Q. So that you would have to have been deaf,
16 dumb, or an idiot if you went to the
17 public schools not to have known about
18 these things?
- 19 A. In those states where they required
20 instruction or they had instruction in
21 public health.
- 22 Q. Kansas was one of those states, wasn't it?
- 23 A. I believe so.
- 24 Q. So in Kansas in the Forties, you would
25 have to have been deaf, dumb, or an idiot

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1 not to have known about those matters; is
2 that right?

3 A. If you went to the public schools.

4 Q. Right.

5 A. If you went to school. If you sat in
6 class and listened.

7 Q. If in fact, the teachers taught the
8 lessons that they were supposed to teach;
9 correct?

10 A. That's correct.

11 Q. Now, did you prepare any drafts of your
12 expert report?

13 A. Well, you have one right there, right here
14 (indicating). It says on it "draft."

15 Q. Did you prepare any others?

16 A. Well, the earliest version of the report,
17 I wrote between, I'm going to guess, the
18 10th or about the 15th or 16th of
19 December.

20 Q. What did you do with the first draft you
21 prepared?

22 A. Well, the attorney Paul Koethe came down
23 and looked at it, and we discussed it.

24 Q. What did he say about it?

25 A. Well, there are notes from that meeting.

1 Q. Where are they?

2 A. Wherever my notes are. I don't know.

3 This must be it here.

4 Q. Exhibit 5?

5 A. Exhibit 5.

6 Q. Well, you can refer to them if that would
7 help. What did he say about the draft you
8 showed him?

9 A. We talked about why I looked at medical
10 articles, and I explained I wanted to see
11 whether the information in medical
12 articles was being fairly reflected in the
13 press and other media outlets.

14 We had a discussion about the
15 nature of the bibliography to be attached,
16 and that's the reason there are two
17 bibliographies attached to the final
18 report, one which is a narrative and one
19 which is specific.

20 Paul asked me whether I read any
21 Life magazine articles, and I told him
22 that I had looked at the articles about
23 Ernest Wynder dealing with -- what do we
24 say? I'm trying to think of a convenient
25 way to say it having to do with painting

1 tar on the backs of my mice. And I said I
2 certainly had. I just neglected to put
3 Life magazine out there.

4 THE WITNESS: You know, I'm
5 going to take a ten-minute break if
6 we are going to keep going.

7 MR. LEYH: All right. Why
8 don't you do that and I'll read
9 this and we'll keep going.

10 It's 3:10 in the afternoon,
11 and we've been discussing at
12 various points during the day how
13 long we're going to go. I intend
14 to complete the deposition in part,
15 counsel. You said you wanted to
16 complete it as opposed to
17 adjourning it and continuing it by
18 telephone, which I'm willing and
19 prepared to do. But based on your
20 remarks before the last break, I
21 don't want to get sandbagged and
22 have you walk out of here or the
23 witness walk out of here before I'm
24 done, so I want to know if you
25 intend to leave before I'm

1 finished.

2 MS. McDOLE: Well, how long
3 is it going to be?

4 MR. LEYH: I --

5 MS. McDOLE: Excuse me. Can
6 I finish?

7 MR. LEYH: Sure.

8 MS. McDOLE: How long will it
9 be until you finish?

10 MR. LEYH: It's very hard to
11 predict, but I imagine it will take
12 me three to four hours to finish.

13 MS. McDOLE: We'll just have
14 to see because, Greg, there's a
15 long history in these depositions
16 of you suddenly pulling the rug
17 from under us.

18 MR. LEYH: When have I done
19 that?

20 MS. McDOLE: Poloay, for
21 example, where we told you it would
22 take two or three days. We didn't
23 even get one full day. Now, I want
24 to finish the break.

25 (A brief recess was taken;

Ms. McDole was not present when
proceedings resumed.)

Q. (BY MR. LEYH) Professor Martin, do you
know what the budget of the tobacco
companies was at any time in the twentieth
century for advertising?

A. No, I don't.

Q. Do you know how much they actually spent
on advertising at any point in time?

A. No.

(Martin Exhibit No. 6 was
marked for identification
purposes.)

Q. (BY MR. LEYH) Do you know how much any
tobacco company spent at any point in time
on public relations?

A. No.

Q. Or on Tobacco Institute work?

A. No.

Q. I'm handing you what we've marked as
Martin 6. Have you seen that document
before?

A. The only portion of this document that
I've seen before is Attachment A, which
lists the documents I'm supposed to bring

1 in.

2 Q. Okay.

3 A. I'm sorry. I didn't look at the last
4 page. No, I didn't see the last page.

5 MR. KACZYNSKI: I didn't
6 either.

7 Q. (BY MR. LEYH) Did counsel provide you
8 with Attachment A?

9 A. Yes.

10 Q. Let's look at Item 1 on Attachment A.
11 Have you brought all of your documents
12 that are responsive to Item 1's request?

13 A. Yes.

14 Q. And they are in the boxes that are in this
15 room?

16 A. Yes.

17 Q. Have you brought all the documents
18 responsive to Item 2?

19 A. Yes.

20 Q. Are there any such documents; medical
21 records, for example?

22 A. I'm not aware of any medical records, but
23 materials that I relied upon are in these
24 boxes.

25 Q. Okay. Let's look at Item 3. Have you

- 1 brought all documents responsive to
2 Item 3?
- 3 A. Yes.
- 4 Q. Item 4?
- 5 A. Well, I couldn't bring anything because if
6 I'm reading it correctly there isn't
7 anything to bring.
- 8 Q. Okay. No such documents exist; is that
9 right?
- 10 A. That's correct.
- 11 Q. Okay. Item 5?
- 12 A. Yes, those materials are here.
- 13 Q. Are there any materials in press?
- 14 A. Yes, they're here.
- 15 Q. Would you tell me what they are?
- 16 A. The chapters that I wrote for the third
17 edition for the textbook called The
18 America and Its People, those chapters are
19 here in copy edited form. Two unpublished
20 book reviews are here, and an article that
21 I wrote for a naval history are here.
- 22 Q. Is the first item you mentioned a textbook
23 in American history?
- 24 A. Yes.
- 25 Q. What are the book reviews reviewing?

1 A. One deals with the Indian drinking problem
2 in Colonial America that will be published
3 in the Journal of Social History, and the
4 other is a book on native Americans in the
5 American Revolution which will be
6 published in a journal called
7 Ethnohistory.

8 Q. Would you look at Item 6 and tell me,
9 please, if there are any documents that
10 exist; if so, have you brought them?

11 A. There are no such documents.

12 Q. Item 7, same questions.

13 A. There's no such correspondence.

14 Q. Is the statement we were talking about for
15 your time a little earlier, you don't
consider that correspondence?

16 A. I was advised by my attorney not to bring
17 that material.

18 Q. Right. So that is the only piece of paper
19 that you didn't bring that's responsive to
20 this; is that right?

21 A. So far as I know.

22 Q. Which lawyer told you not to bring it?

23 A. Sidney McDole.

24 Q. Okay. When did she tell you that?

1 A. I guess two days ago.

2 Q. Did she tell you why she didn't want you
3 to bring it?

4 A. I don't remember that she specified any
5 particular reason.

6 Q. Okay.

7 MR. LEYH: Let's go off the
8 record.

9 (Martin Exhibit No. 7 was
10 marked for identification
11 purposes.)

12 MR. LEYH: Back on the
13 record.

14 (Ms. McDole entered the
15 deposition room.)

16 Q. (BY MR. LEYH) Professor, I'm handing you
17 Exhibit 7 and ask you to identify that,
18 please.

19 A. Exhibit 7 are the publications and press
20 that we just discussed.

21 Q. Some of those documents, it's a large
22 rubber band full of documents, have
23 handwriting on them. Is all the
24 handwriting in Exhibit 7 your own?

25 A. No.

1 Q. Your editor's handwriting?

2 A. Yes.

3 Q. Okay: Is any of the handwriting yours as
4 you look through?

5 A. The handwriting at the top of this was
6 meant to be helpful, "To appear in the
7 Journal of Social History" is mine. "To
8 appear in Ethnohistory" is mine. "Draft
9 is mine on this particular paper,
10 Expended but not Wasted. "Third edition,
11 America and Its People" was mine, and then
12 in the book manuscript for America and Its
13 People, there are very marginal comments
14 where I had differences with editors, with
15 the editor.

16 Q. Do any of the documents in Exhibit 7
17 relate to tobacco?

18 A. First, I believe it was the second chapter
19 of the textbook talks briefly about the
20 rise of the tobacco, of the development
21 of -- I'm trying to think of the right
22 word -- tobacco production. The
23 development of the tobacco production in
24 Virginia in the 17th century in the
25 Chesapeake area.

1 Q. Is that a second or third edition of the
2 textbook?

3 A. Third edition.

4 Q. Is that part on tobacco new to the third
5 edition, or is that in previous editions?

6 A. That's in previous editions.

7 Q. When was the first edition written?

8 A. I began writing it in 1986, and it was
9 published in 1989.

10 Q. Okay.

11 (Martin Exhibit No. 8 was
12 marked for identification
13 purposes.)

14 Q. (BY MR. LEYH) Would you identify
15 Exhibit 8, please?

16 A. Newspaper articles, tobacco research,
17 Springfield News and Leader Sunday papers,
18 January 1955 through August 1955; and then
19 additional years '56, '57, '58, '59 and
20 '60.

21 Q. Are there any handwritten notes on any of
22 those papers in Exhibit 8 or highlights?

23 A. There are highlights.

24 Q. Who highlighted?

25 A. I did.

1 Q. Where did you get those documents?

2 A. These documents were provided by a public
3 history research firm PHR Consultants in
4 California.

5 Q. Have you worked with them before?

6 A. Yes.

7 Q. Is that a common thing you do, is you get
8 documents from them?

9 A. In one other instance, yes.

10 Q. Okay. What was that instance?

11 A. That was when I was working on the Richard
12 Rogers case in Indiana.

13 Q. Did you communicate to them in writing
14 what particular documents you wanted?

15 A. I communicated to them by telephone.

16 Q. Whom did you talk to?

17 A. A person by the name of Shelley Bookspan
18 who is the whatever. I'm not sure what
19 her title is, but she is in charge of the
20 company, president of the company.

21 Q. How did you describe what documents you
22 were after?

23 A. I talked about documents that, in this
24 case newspaper articles that would have
25 appeared in communities where David Burton

1 lived between 1950 and 1965 approximately;
2 in other words, the Emporia Gazette for
3 the years 1954, 1955, and then the early
4 Sixties, and in turn the papers that were
5 published in Springfield, Missouri, where
6 from his deposition it was my
7 understanding and also my conversation
8 with Mr. Kaczynski, my initial
9 conversation, that Mr. Burton had lived
10 between 1955 and 1960.

11 Q. Did you tell her what kinds of articles in
12 those particular newspapers you were
13 after?

14 A. Every article that said anything about
15 smoking.

16 Q. Whether it was positive or negative or any
17 other thing?

18 A. That's right, yes.

19 Q. Do you recall receiving from her any
20 articles that suggested there was a
21 controversy in the Sixties or later on
22 whether or not cigarettes caused disease?

23 A. In the Sixties or later?

24 Q. Yes.

25 A. The articles in the Emporia Gazette go

1 through 1965. I believe that's true of
2 the Kansas City papers which were the
3 regional papers with the highest
4 circulation.

5 Q. Up until '65, then?

6 A. Up until '65 that dealt with the
7 controversy?

8 Q. The fact that there was a controversy.

9 A. Oh, I'm sure some of the articles must
10 have dealt with the controversy.

11 Q. Do you recall whether it was a modest
12 number?

13 A. No, I don't.

14 Q. Now, looking at Exhibit 8, the first page
15 has some "A," "B" written in the left-hand
16 margins with some check marks. Who did
17 that?

18 A. I did.

19 Q. What does that mean?

20 A. That means "A" articles spoke, if I recall
21 this correctly, spoke to issues,
22 health-related issues, and "B" articles
23 were not as relevant to health-related
24 issues. It's just an attempt to initially
25 try to get it --

1 Q. The cream?

2 A. The articles that were most germane to the
3 subjects that I was expected, that I was
4 asked to look into.

5 Q. Do the checks have any significance?

6 A. I would think the check means that I read
7 the article.

8 Q. Okay. Well, you have written here
9 something which looks like "Blatnik" after
10 a few of them.

11 A. Yes, those were articles in which the
12 Blatnik hearings, I believe those are
13 articles that dealt with the Blatnik
14 hearings.

15 Q. What are the Blatnik hearings?

16 A. They were called by Congressman John
17 Blatnik in the summer of 1957 having to do
18 with the filter cigarettes and whether
19 those cigarettes were being misrepresented
20 to the public.

21 Q. And then you have "NQ" after several. Do
22 you know what that means?

23 A. Yes, "NQ" in my system means there's a
24 quotation in there that is of interest.

25 (Martin Exhibits Nos. 9 and

1 10 were marked for identification
2 purposes.)

3 Q. (BY MR. LEYH) Okay. Would you tell me
4 what Exhibit 9 contains?

5 A. Springfield Leader and Press, January 1955
6 through June 1959, January 1960 through
7 December 1960.

8 Q. Would it be fair to say, professor, that
9 all the highlighting or handwriting
10 notations on these exhibits that contain
11 newspaper articles would be your own hand?

12 A. They would either be my own hand or those
13 of my research assistant.

14 Q. And what did your research assistant do
15 for you in this case?

16 A. She followed the same procedure and
17 divided articles, and then I reviewed her
18 work with respect to dividing articles.
19 We did that to try to save time.

20 Q. What is her name?

21 A. Katie Harrison.

22 Q. What is her experience?

23 A. She's a graduate student at the University
24 of Houston working on her master's degree
25 in U.S. History.

1 Q. Okay. Do you know where she did her
2 undergraduate?

3 A. She studied at, I believe, Southwest Texas
4 State University in San Marcos; but I
5 believe she finished her degree at the
6 University of Houston, her undergraduate
7 degree.

8 Q. Did you read every newspaper article that
9 was sent to you by this California firm?

10 A. I don't think I read every word of every
11 article, no.

12 Q. Did you look at every article --

13 A. Yes.

14 Q. -- at least?

15 A. Yes.

16 Q. Okay. Did she read, to your knowledge,
17 every word of every article?

18 A. In those packages that she went through,
19 that was her assignment.

20 Q. So you read them all, and she read some?

21 A. No, what I did because of time shortages,
22 I asked her to read some of the packages
23 to divide them as to whether they were
24 germane to the questions that I was to
25 look into; and in turn, to let me know,

1 and then I reviewed everything after she
2 did that. So some of the underlining
3 markings in some of the packages may be
4 hers.

5 Q. How did she identify to you those articles
6 that she thought most germane?

7 A. She used the exact same A-B designation
8 that I used.

9 Q. Okay. I've got what we're going to
10 identify as Exhibit 10, but is that her
11 hand marking?

12 A. Yes.

13 Q. And have you billed for her time
14 separately from your own?

15 A. Yes.

16 Q. How much do you bill her out at?

17 A. \$25 an hour.

18 Q. And how many hours, if you know, has she
19 worked on this case?

20 A. I don't have any idea, a lot.

21 Q. A lot. Do you know when she began working
22 on this case?

23 A. I would guess by the end of August or
24 early September of 1995.

25 Q. Do you know if all of the time for which

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in
HOMER

- 1 you billed for her has been paid?
- 2 A. I assume so. She hasn't indicated to me
- 3 that she hasn't.
- 4 Q. Does she get paid personally, or does it
- 5 go to the University?
- 6 A. She doesn't have anything to do with the
- 7 University on this project. She bills
- 8 directly to Jones, Day.
- 9 Q. She's an independent contractor on this
- 10 one?
- 11 A. Uh-huh.
- 12 Q. Can you approximate how much she's been
- 13 paid?
- 14 A. No, I really can't, but I can tell you she
- 15 has spent an enormous amount of time on
- 16 this project.
- 17 Q. Do you think it's been more than a few
- 18 thousand dollars?
- 19 A. I don't know. 150 to 200 hours, we can do
- 20 our math and see what we come up with.
- 21 Q. You think 150 or 200 hours would be about
- 22 right?
- 23 A. Yes.
- 24 Q. Tell us what is contained in Exhibit 10.
- 25 A. Kansas City Kansan, reviewed articles

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- 1 1954, 1957, 1962, and 1964.
- 2 Q. Why only those years and not every year?
- 3 A. Because those are years in which the
- 4 newspaper coverage would have been most
- 5 extensive because of various public
- 6 announcements with respect to
- 7 health-related issues having to do with
- 8 smoking.
- 9 Q. Did you specifically ask for those
- 10 particular years?
- 11 A. I don't recall that I asked for those
- 12 particular years, but I must have because
- 13 '54, '57, '62, and '64 are four of the
- 14 most newsworthy years.
- 15 Q. And would all of the handwriting contained
- 16 in Exhibit 10 be either yours or your
- 17 assistant's?
- 18 A. Yes.
- 19 Q. Okay.
- 20 (Martin Exhibit No. 11 was
- 21 marked for identification
- 22 purposes.)
- 23 Q. (BY MR. LEYH) Would you identify
- 24 Exhibit 11?
- 25 A. These are the Kansas City Star articles,

1 newspaper articles drawn from the Kansas
2 City Star, August 1954 through July 1964,
3 but actually, that is, these are from the
4 primary years '54, '57, '62, and '64. I'm
5 looking to see if there are any other
6 years. These are all '54, '57, '62, and
7 '64.

8 Q. Before you put that away --

9 A. Okay.

10 Q. -- do you see the articles in here have a
11 lime green sticky on it? Do you know
12 whose handwriting that is?

13 A. That's Katie Harrison's handwriting.

14 Q. Okay.

15 (Martin Exhibits Nos. 12 and
16 13 were marked for identification
17 purposes.)

18 Q. (BY MR. LEYH) Would you identify
19 Exhibit 12?

20 A. These would be newspaper articles from the
21 Kansas City Times.

22 Q. Whose handwriting is on the top clip in
23 pencil there or with a pen?

24 A. Katie Harrison's. Right here
25 (indicating)? Is this what you mean?

1 Q. I mean all throughout here.

2 A. Katie Harrison's. These are 1962 and
3 1964.

4 Q. For the record, we were looking at the
5 first page. The entire first page
6 contains handwriting you're suggesting is
7 Katie Harrison's?

8 A. Yes.

9 Q. And would you tell us what Exhibit 13 is,
10 please?

11 A. Emporia Gazette, 1954, 1955, 1961, 1962,
12 1963, 1964, 1965, 1966, 1967.

13 Q. Whose highlighting and handwriting is in
14 that exhibit?

15 A. Mine.

(Martin Exhibits Nos. 14 and
15 were marked for identification
16 purposes.)

17 Q. (BY MR. LEYH) Identify Exhibit 14,
18 please.

19 A. Two items on Lucy Page Gaston from
20 approximately 1920.

21 Q. Where did you get these articles?

22 A. These would probably have been in the
23 files that I visited in the summer of 1994
24
25

- 1 at the Arnold & Porter law firm.
- 2 Q. And where is that law firm's office
- 3 located, the one you visited?
- 4 A. Washington, D.C.
- 5 Q. What was the occasion of your visit there?
- 6 A. Well, they had a very extensive collection
- 7 of documents with respect to tobacco.
- 8 Q. This is the summer of '94?
- 9 A. The summer of 1994.
- 10 Q. That would have been after the time you
- 11 first met Mr. Kaczynski?
- 12 A. Yes.
- 13 Q. How did you come to learn of the
- 14 collection at Arnold & Porter?
- 15 A. Well, I'm sure that Mr. Koethe and
- 16 Mr. Kaczynski told me.
- 17 Q. Were you there on more than one occasion?
- 18 A. One time.
- 19 Q. How long did you spend at the law firm
- 20 there?
- 21 A. Approximately a day and a half.
- 22 Q. Okay. Do you know whether or not that law
- 23 firm represents any parties in tobacco
- 24 litigation?
- 25 A. I can't say for sure.

1 Q. On Exhibit 14, there is a pink tag saying
2 "Kansas material" on one of the
3 documents?

4 A. Yes.

5 Q. Who wrote that?

6 A. Katie Harrison, that's her writing.

7 Q. And do you know who wrote the handwriting
8 labels on the file folders we're going
9 through?

10 A. Katie Harrison.

11 Q. Would you identify Exhibit 15?

12 A. 1919 newspaper articles, Lucy Page Gaston.

13 Q. Did you get those from Arnold & Porter?

14 A. I would say probably, yes, because they're
15 Burrelle's -- excuse me. They are
16 Burrelle's press clippings. They're from
17 the Burrelle's Press Clipping service
18 which is a nationally known and respected
19 press clipping service. So I believe that
20 would have been from Arnold & Porter.

21 Q. Did you make the trip to Arnold & Porter
22 alone?

23 A. No.

24 Q. Who accompanied you?

25 A. I took a graduate student by the name of

1 Diana Dean.

2 Q. And she looked at documents, and you
3 looked at documents; is that right?

4 A. Well, I looked at documents, and she was
5 tagging those documents so that we could
6 get copies of those documents.

7 Q. Did you visit with any lawyers while you
8 were at Arnold & Porter for a day and a
9 half?

10 A. Yes, I'm trying to remember the person's
11 name. I think it is, it's either -- I
12 know the first name is Jan; the last name
13 is Johnson or Johnston. I think it's
14 Johnson without the T.

15 Q. Did she exhibit some familiarity with
16 these documents?

17 A. Yes.

18 Q. Did you talk to her about tobacco
19 litigation?

20 A. I don't remember that we talked about any
21 particular case at all.

22 (Martin Exhibit No. 16 was
23 marked for identification
24 purposes.)

25 Q. (BY MR. LEYH) Tell me what Exhibit 16

1 is.

2 A. 1920 newspaper articles, Lucy Page Gaston.

3 Q. Arnold & Porter collection?

4 A. Well, a number of them are Burrelle's, so
5 I would say yes.

6 Q. While you were there at Arnold & Porter
7 for a day and a half, did you manage to
8 look through their entire collection of
9 newspaper clippings?

10 A. Yes

11 Q. To your knowledge, did they have other
12 collections available related to tobacco?

13 A. They have The New York Times, some of the
14 popular magazines, Newsweek, Time, Life.
15 I think I saw a Consumer Reports from
16 there. I'm trying to give you, the best I
17 can, examples. They may well have had
18 some regional papers, but I didn't spend
19 much time looking at them.

20 Q. Okay. But all of the examples you gave me
21 were examples of publications on tobacco
22 that were collected at Arnold & Porter; is
23 that right?

24 A. Articles dealing in some way with tobacco.

25 Q. Okay.

(Martin Exhibit No. 17 was
marked for identification
purposes.)

Q. (BY MR. LEYH) Would you tell us what
Exhibit 17 is?

A. Articles on Lucy Page Gaston.

Q. Is that one of the articles you had in
mind when you told me earlier this morning
that she would sometimes be prone to
disorder?

A. That she would be prone to disorder in
what sense?

Q. Causing a ruckus or violence or
something.

A. Well, I think I made that comment in
reference to Carrie Nation, not Lucy Page
Gaston.

Q. All right. Who made the note on that
particular exhibit?

A. This is Katie Harrison's handwriting.

Q. Is that document significant to you in the
context of your opinion in this case?

A. Yes, it is.

Q. Tell me why, if you would.

A. Because this refers to an attempt

1 apparently inspired by Lucy Page Gaston to
2 enforce the Kansas anti-cigarette law. It
3 says here that 35 stores in Topeka were
4 raided on suspicion of violating the law.
5 I'm assuming the law they are referring to
6 is the anti-cigarette law in Kansas.

7 Q. What year did that occur?

8 A. The article is dated August 5, 1921.

9 Q. Over.

10 (Martin Exhibit No. 18 was
11 marked for identification
12 purposes.)

13 Q. (MR. LEYH) Exhibit 18?

14 A. Oh, this is more material on Lucy Page
15 Gaston. And because she was so adamant in
16 her idea, she parted company with the
17 International Anti-Cigarette League. And
18 toward the latter part of 1921, she began
19 what she called the "Clean Life
20 Movement."

21 MR. KACZYNSKI: Did you see
22 her picture?

23 MR. LEYH: I didn't take a
24 close look at her.

25 MR. KACZYNSKI: She said she

1 looked like Abraham Lincoln at one
2 point.

3 MR. LEYH: I appreciate you
4 bringing that to my attention.

5 Q. (BY MR. LEYH) Is it the Clean Life; is
6 that what you called it?

7 A. She called it the Clean Life Movement.

8 Q. What were its principles?

9 A. I would venture a guess that it had
10 something to do with clean living.

11 Q. Do you know how that idea was to be
12 manifested, not hanging out with lawyers?

13 A. Yes. I can even give you a quotation.

14 'Clean speech, clean sports, clean
15 habits,' and adjures men and women to
16 'abjure alcohol and tobacco and 'all other
17 types of immorality.'"

18 Q. I guess that says it all.

19 A. Lucy Page Gaston was at this point past
20 the peak in her career.

21 (Martin Exhibit No. 19 was
22 marked for identification
23 purposes.)

24 Q. (BY MR. LEYH) Exhibit 19?

25 A. 1923 newspaper articles, Lucy Page Gaston.

1 Apparently the Clean Life Movement didn't
2 work out, so she is back to anti-cigarette
3 activity, per se.

4 (Martin Exhibit No. 20 was
5 marked for identification
6 purposes.)

7 Q. (BY MR. LEYH) Exhibit 20?

8 A. 1924, Lucy Page Gaston.

9 Q. Is there anything in Exhibit 20 of
10 particular importance to your opinion?

11 A. Yes.

12 Q. Tell me what.

13 A. Lucy Page Gaston died in 1924. She was
14 hit by an automobile, and she only had
15 minor injuries; however, while at the
16 hospital recovering, they discovered that
17 she had throat cancer, and she would die
18 shortly thereafter of throat cancer.
19 Newspaper after newspaper after newspaper
20 noted the irony of this woman who had
21 battled against cigarettes, who had never
22 smoked, dying with a disease that so often
23 at that time was associated with smoking.
24 Q. That is ironic, isn't it?
25 A. Yes.

(Martin Exhibit No. 21 was
marked for identification
purposes.)

Q. (BY MR. LEYH) Would you tell us what
Exhibit 21 contains?

A. It looks like miscellaneous materials
about the Anti-Cigarette League.

Q. Is the Anti-Cigarette League one of the
anti-tobacco groups that was busy in the
twenties?

A. Yes.

Q. What was its history briefly? When was

A. It goes back to its founding in about 1900
as the Anti-Cigarette League. This would
be one of the spin-off versions in the
1920s.

(Martin Exhibit No. 22 was
marked for identification
purposes.)

Q. (BY MR. LEYH) Exhibit 22?

A. Materials from the International
Anti-Cigarette League, which was the name
that the organization took as I recall
around 1919, moved from being the National

1 to the International Anti-Cigarette
2 League. It contains various types of
3 correspondence along with activities of
4 the League and the annual meeting, a
5 notice of an annual meeting of the League.

(Martin Exhibit No. 23 was
marked for identification
purposes.)

Q. (BY MR. LEYH) Exhibit 23?

A. In August of 1994, I made a trip to the
Library of Congress to look up information
to get a better sense of materials on
tobacco in the early twentieth century. I
did a variety of runs from the card
catalog to come up with possible materials
to look at, and that's what this would
consist of. Those are the materials that
I ran off the computer at the Library of
Congress.

Q. Who paid for that trip to the Library of
Congress?

A. Two people did or two sources did. Well,
maybe we should make that three. My
brother gave me an automobile to drive. I
was in western New York at the time, and I

produced by BRLC

1 paid for all of my expenses, and for my
2 hours at the Library of Congress, I
3 submitted those to Jones, Day.

4 Q. You submitted bills to Jones, Day for what
5 part of your time?

6 A. For the time I worked at the Library of
7 Congress.

Q. How long were you there in terms of days,
if you know?

10 A. I think I spent two full days, but I'd
11 have to check. I think I spent two full
12 days at the Library of Congress.

Q. The subject searches are your searches?

1-4 A Yes.

15 Q And did you read all of the books produced
16 by your search?

17 A. No.

Q. Okay. Did you go through here and handpick the ones you wanted to look at.

20	A.	Yes
----	----	-----

Q. And is there any indication in Exhibit 23 of which ones you selected? Do you want to look at it?

24 (Witness examines document.)

25 A. I don't believe there is, no.

(Martin Exhibit No. 24 was
marked for identification
purposes.)

Q. (BY MR. LEYH) Would you identify
Exhibit 24?

A. Literature on the WCTU.

Q. Are those WCTU pamphlets?

A. Yes, of various types and kinds, yes.

Q. Various what?

A. Various types and kinds of WCTU pamphlets.

Q. Do they cover any particular time frame?

A. I would say the 1920s.

Q. Where did you get those?

A. Well, they go into the 1930s. I'm really
not sure where these materials came from.

Q. Can you tell me whose handwriting is on
the first page of the top document?

A. Yes, Katie Harrison's.

Q. Was she responsible for acquiring certain
materials?

A. Yes, but not that group. Not that group I
don't think. I think that group goes back
to 1990. I really don't know. I don't
remember. They may have come from the
Arnold & Porter materials.

produced by B.J.R.T.C.

1 Q. What documents was Katie Harrison
2 responsible for acquiring?

3 A. Well, she was able to get some material
4 through the interlibrary loan system at
5 the University of Houston. I'm trying to
6 think of a specific material that she may
7 have brought to the collection.

(Martin Exhibit No. 25 was
marked for identification
purposes.)

8
9
10
11 Q. (BY MR. LEYH) Would you tell us what
12 Exhibit 25 contains?

13 A. Yes, this is a magazine called Health,
14 various kinds of literature being made
15 available to women and children from
16 various sources, mainly from the 1930s.

17 Q. Do you know if you read closely that top
18 document in that package? There's an
19 article about defending tobacco ads
20 identified at the bottom of that page. Do
21 you recall reading that?

22 A. No, I don't recall reading it.

23 Q. All right. Do you see any handwritten
24 notes or highlights in that document
25 indicating that somebody might have been

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in
HAWAII

- 1 there?
- 2 A. This (indicating)?
- 3 Q. Yes, that's what I'm talking about.
- 4 A. No, I don't see any notes on there at
- 5 all. "Debunking Tobacco"?
- 6 Q. Keep flipping; you'll see "Advertising."
- 7 A. Right here (indicating)? This doesn't
- 8 ring a specific bell.
- 9 Q. All right.
- 10 (Martin Exhibits Nos. 26 and
- 11 27 were marked for identification
- 12 purposes.)
- 13 Q. (BY MR. LEYH) Exhibit 26?
- 14 A. Lookout, a magazine of religious
- 15 education, 1919, 1921, 1922, that time
- 16 frame.
- 17 Q. Who is responsible for publishing
- 18 Lookout? Do you know what religious
- 19 group?
- 20 A. No, I don't. I don't recall.
- 21 Q. Do you know what the readership at any
- 22 point in time was of Lookout?
- 23 A. No.
- 24 Q. Do you know if it was ever available in
- 25 Emporia, Kansas?

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1 A. No.

2 Q. Exhibit 27?

3 A. Lookout magazine.

4 (Martin Exhibit No. 28 was
5 marked for identification
6 purposes.)

7 Q. (BY MR. LEYH) What's Exhibit 28, please?

8 A. A statement from the National Tobacco
9 League.

10 Q. What year is that statement?

11 A. This statement is undated, but I would
12 presume from the 1920s.

13 Q. Where did you get that?

14 A. 1919 is the date. I can't be sure of
15 where I got this.

16 (Martin Exhibit No. 29 was
17 marked for identification
18 purposes.)

19 Q. (BY MR. LEYH) What is Exhibit 29?

20 A. More materials from the International and
21 National Anti-Cigarette League.

22 Q. Do you know where you got those materials?

23 A. I can't say for sure.

24 Q. There was a document in Exhibit 29,
25 professor, that identified some of the

produced by R.J.R.T.C.

in

HUMPHREY

1 alleged harms caused by cigarette smoking;
2 and one of them was, I'm looking for it,
3 that you could injure your eyesight. Have
4 you seen that reference before?

5 A. Yes.

6 Q. Here it is: "Excessive use of tobacco
7 injures eyesight." Do you know whether or
8 not there's ever been any scientific proof
9 that cigarette smoking injures eyesight?

10 A. I know that there's a disease that was
11 treated repeatedly in the twentieth
12 century. I can't recall the name of it
13 right now that had to do with dimming of
14 the vision; and after 50 years of treating
15 individuals, the disease was dropped
16 because there was no evidence that the
17 disease even existed.

18 (Martin Exhibit No. 30 was
19 marked for identification
20 purposes.)

21 Q. (BY MR. LEYH) Tell us, if you would, what
22 Exhibit 30 is.

23 A. An Anti-blue law magazine, The
24 Libertarian.

25 Q. The big "L" Libertarian.

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in
HUMPHREY

1 A. I knew we could find something relative to
2 that. Materials from the teens and
3 Twenties, well, this is 1921, early 1920s.

4 Q. Do you know where you got that?

5 A. No, I can't say for sure.

6 Q. Did the tobacco company attorneys send you
7 any newspaper articles or other sources of
8 information upon which you relied in
9 rendering your opinion?

10 A. No.

11 Q. Other than the deposition of David Burton,
12 to the extent you relied on that?

13 A. That's right.

14 (Martin Exhibit No. 31 was
15 marked for identification
16 purposes.)

17 Q. (BY MR. LEYH) Okay. Exhibit 31?

18 A. "The Anti-Tobacco Crusade after World
19 War I," dated January 1970. I have no
20 idea where this document came from.

21 Q. Do you recall reading it?

22 A. I may have read it up to two years ago,
23 but I don't recall reading it in recent
24 months.

25 Q. You didn't read it in the last five months

52005 2029

1 in this case?

2 A. No.

3 Q. Okay.

4 A. But that wasn't what my charge was. It
5 was to bring out any material that might
6 in any way be relevant to the subject at
7 hand.

(Martin Exhibit No. 32 was
marked for identification
purposes.)

8
9
10
11 Q. (BY MR. LEYH) Would you tell us what
12 Exhibit 32 is, please?

13 A. It says "textbooks." That's what it is,
14 materials from various textbooks.

15 Q. Where did you get that?

16 A. I can't be sure.

17 Q. Have you read it in the last five months?

18 A. This material?

19 Q. Yes.

20 A. I would say that this is stuff that John
21 Ettling had.

22 Q. Who is John Ettling?

23 A. John Ettling is a historian, was a
24 historian at the University of Houston, is
25 now Dean of Arts and Sciences at the

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in
Hempire

1 University of North Dakota. And I can't
2 give you a specific year, but in years
3 past, he worked with Mr. Kaczynski and
4 others.

5 Q. Do you know if he ever testified in any
tobacco case?

7 A. I don't believe he did.

8 Q. When did you speak to him about textbook
9 materials?

10 A. Probably in 1994.

11 Q. At that time was he here or was he --

12 A. Yes, he was here. He just moved to North
13 Dakota last September or August '95.

14 Q. Has he to your knowledge published
15 anything on tobacco?

16 A. No.

17 Q. Did you ask him for documents he might
18 have that he thought you might like to
19 see?

20 A. No, he called me up one day and said, "I
21 have a box of documents in my garage and
22 I'm moving to North Dakota, would you like
to have them?"

24 I said, "Why not."

25 Q. What else was in the box other than this?

1 A. Well, maybe some of the rest of this
2 material we'll even go through, yet, this
3 afternoon.

4 Q. Okay. Do you know if any of the
5 textbooks, copies of which are contained
6 in Exhibit 32, were used in Emporia,
7 Kansas at any time?

8 A. I don't know.

9 Q. Okay. Did you rely on the information in
10 Exhibit 32 for reaching your conclusions
11 about school --

12 A. No.

13 Q. Information?

14 A. No.

(Martin Exhibit No. 33 was
marked for identification
purposes.)

15 Q. (BY MR. LEYH) What is Exhibit 33?

16 A. A miscellaneous, unorganized file dealing
17 with a whole variety of anti-tobacco
18 groups.

19 Q. Do you know where you got that file?

20 A. This could have possibly been Ettling
21 material. There are some Burrelle's
22 clippings, which means that some of it may
23
24
25

1 have come from the Arnold & Porter
2 collection. Those would be the two most
3 likely sources.

4 (Martin Exhibit No. 34 was
5 marked for identification
6 purposes.)

7 Q. (BY MR. LEYH) Tell us what Exhibit 34
8 is.

9 A. This is an item called "American
10 Literature Awareness Survey" by
11 Dr. Richard Harp. The document is dated
12 October 27th, 1986. The person by the
13 name I mentioned earlier, by the name of
14 Diana Dean traveled to Cleveland and
15 looked through materials at Jones, Day
16 sometime during the summer of 1994 in
17 reference to the Rogers' case, and this
18 was material that she brought back from
19 that trip.

20 Q. Do you know who Dr. Richard Harp is?

21 A. I believe he is an English -- if he's
22 still active, I believe he is an English
23 professor. I'm not sure what institution
24 he teaches at. I don't recall.

25 Q. Okay. Other than this document, do you

1 recall having read any of Dr. Harp's other
2 works?

3 A. No.

4 Q. Have you or your assistants made trips to
5 other law firms other than Arnold & Porter
6 and Jones, Day in Cleveland to examine
7 documents, ever?

8 A. No.

9 Q. Have you ever personally made a trip to
10 Jones, Day in Cleveland to examine
11 documents?

12 A. No.

13 Q. For any other reason?

14 A. Well, I grew up 25 miles outside of
15 Cleveland, so I've driven up to Cleveland
16 a couple of times, and we had lunch at the
17 baseball stadium.

18 Q. You and Mr. Kaczynski?

19 A. Yes.

20 Q. Okay. Did you rely on Exhibit 34 in
21 rendering your opinion in the Burton case?

22 A. That would be just as general background
23 material.

24 Q. Do you recall reading it in the last five
25 months?

1 A. No, I didn't read it in the last five
2 months.

3 MR. LEYH: I got one box
4 down. Do you want to take a short
5 break?

6 THE WITNESS: Sure, why not.
7 (A brief recess was taken; and
8 Martin Exhibits Nos. 35 through 37
9 were marked for identification
10 purposes.)

11 Q. (BY MR. LEYH) Would you tell us what
12 Exhibit 35 is, please?

13 A. These are anti-smoking public service
14 announcements between 1966 and 1987 put
15 out and aired on television by the
16 American Cancer Society.

17 Q. I take it that didn't have anything to do
18 with your report?

19 A. Well, it's a little bit beyond the time
20 frame.

21 Q. Where did you get that tape?

22 A. From the American Cancer Society.

23 Q. When did you receive that tape?

24 A. In December of 1995.

25 Q. Did you ask for it?

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in
Hampshire

- 1 A. Yes.
- 2 Q. Why?
- 3 A. Well, at that point in time, I had been
- 4 asked to look into issues on a case in New
- 5 Jersey that did deal with the Seventies
- 6 and the Eighties. That case, however, was
- 7 quickly dismissed, and this was a process
- 8 of beginning to get materials.
- 9 Q. Who asked you to potentially work on that
- 10 case?
- 11 A. Mr. Kaczynski.
- 12 Q. Do you know the case name?
- 13 A. No, I honestly don't.
- 14 Q. All right. Have you viewed this tape in
- 15 the last five months?
- 16 A. Yes.
- 17 Q. Okay. Why did you look at it in the last
- 18 five months?
- 19 A. I just got it in December.
- 20 Q. That other case, is that the reason?
- 21 A. Yes.
- 22 Q. What is Exhibit 36?
- 23 A. Part 1 and Part 2, "See It Now," CBS News
- 24 special report; aired on television
- 25 5/31/55, 6/7/55; Edward R. Murrow, host.

1 This particular program, two programs, is
2 a summary of the debate over smoking and
3 whether smoking is a source or a cause of
4 cancer.

5 Q. Where did you receive Exhibit 36, from
6 what source?

7 A. Jones, Day, Reavis & Pogue.

8 Q. Did you ask for those tapes?

9 A. I must have asked. I think these tapes, I
10 received these in the summer of 1994. I'm
11 sure I was asking at that point for
12 materials that had anything to do with
13 what appeared on television knowing how
14 difficult it is to get that kind of
15 material.

16 Q. Is it your recollection that you may have
17 made a general request for that kind of
18 television material, and you were provided
19 with, among other things perhaps,
20 Exhibit 36?

21 A. Yes.

22 Q. Did you ever make a specific request of
23 the Jones, Day lawyers for the CBS News
24 "See It Now" tapes?

25 A. Actually, I requested a lot more than

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in
HUNTER

- 1 that.
- 2 Q. Specifically?
- 3 A. Yes. Well, not that specific, but I was
- 4 particularly interested in seeing if it
- 5 would be possible to get programs that
- 6 were put out by Bishop Fulton J. Sheen
- 7 during the 1950s that my father watched
- 8 and that convinced him that he should stop
- 9 smoking; Bishop Sheen being a major leader
- 10 in the Roman Catholic church, as well as
- 11 he had either a half hour or hourly
- 12 program on national news during the 1950s.
- 13 Q. On television?
- 14 A. On television, yes.
- 15 Q. Have you viewed Exhibit 36 in the last
- 16 five months?
- 17 A. Yes, I have.
- 18 Q. On more than one occasion?
- 19 A. I think the first time I viewed it would
- 20 have been shortly after I got it, which
- 21 would have been the summer of 1994. I
- 22 looked at it again approximately a month
- 23 ago.
- 24 Q. Did you look at it in the company of any
- 25 other person either time?

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in
HENDERSON

- 1 A. No.
- 2 Q. What's Exhibit 37?
- 3 A. CBS news extra on smoking and health,
4 television coverage of the announcement of
5 the Surgeon General's report. The date is
6 1/11/64.
- 7 Q. Have you viewed that in the last five
8 months?
- 9 A. This particular tape, no.
- 10 Q. Do you know when you received this tape?
- 11 A. I'm going to guess, I'd say, during the
12 summer of 1994.
- 13 Q. That's a tape that was provided by Jones,
14 Day; is that correct?
- 15 A. That's correct, yes.
- 16 Q. Did you rely on this in forming your
17 opinion in the Burton case?
- 18 A. Well, I would say yes, because it is
19 public national media coverage of the
20 Surgeon General's report.
- 21 (Martin Exhibit No. 38 was
22 marked for identification
23 purposes.)
- 24 Q. (BY MR. LEYH) Tell us what Exhibit 38
25 is.

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1 A. Congressional Record; a 1929 speech by
2 Senator Smoot.

3 Q. That must be the speech that Professor
4 Burnham wrote about.

5 A. Yes, he just didn't seem to have the
6 context correct. And Senator Smoot
7 denounced cigarettes in this particular
8 speech, and he talked about the general
9 habit of cigarette addiction. And since
10 cigarettes were addictive, as he defined
11 them in 1929, they should be put under the
12 control of the Food and Drug
13 Administration.

14 Q. How did he define "addictive," do you
15 know?

16 A. He didn't define it in there. I would
17 assume that he meant that it was difficult
18 to quit smoking.

19 Q. Because that was a common understanding of
20 addictive at that time, is that why you
21 would make that assumption?

22 A. Well, I would only be guessing if I made
23 that assumption.

24 Q. Where did you acquire Exhibit 38?

25 A. I really don't know. That may well have

A. Yes.

1 Q. What were they?

2 A. Well, I know what Blatnik's conclusions
3 were.

4 Q. Do you know -- well, tell me what
5 Blatnik's conclusions were.

6 A. Blatnik's conclusions were that filter-tip
7 cigarettes were being falsely advertised
8 because there weren't any standards by
9 which to measure tar and nicotine. There
10 weren't commonly accepted tandards at
11 that time.

12 Q. Where did you acquire Exhibit 39?

13 A. I'm not sure. My guess would be this
14 would have been -- could well have been
15 out of our own library collections at the
16 University of Houston.

17 Q. Did you ask someone to search your library
18 here, or did you go --

19 A. I would have asked someone like Diana Dean
20 Katie Harrison to go find it and make a
21 copy of it.

22 Q. Is there any highlighting on that
23 document?

24 A. No.

25 Q. Did you rely on that in writing your

1 opinion in the Burton case?

2 A. Yes.

3 (Martin Exhibit No. 40 was
4 marked for identification
5 purposes.)

6 Q. (BY MR. LEYH) What's Exhibit 40?

7 A. A copy of the Surgeon General's report
8 "Smoking and Health," or the report to
9 the Surgeon General on smoking and health,
10 1964.

11 Q. Do you know where you got that?

12 A. This may have been in the Ettling
13 material.

14 Q. Have you read that document, professor?

15 A. I haven't read every word of it. I've
16 read certain portions of it.

17 Q. Is there highlighting in that document?

18 A. Just in a few instances.

19 Q. Is it your highlighting?

20 A. Yes, if it's blue, it's mine. I thought I
21 saw --

22 Q. Pink. Isn't there pink in that one?

23 A. Sometimes it's pink; sometimes it's blue.
24 I would say this came from John Ettling in
25 the box of materials that he gave me.

(Martin Exhibit No. 41 was
marked for identification
purposes.)

Q. (BY MR. LEYH) What is Exhibit 41?

A. These are laws, summary of laws, both
national and specific with relation to
Kansas anti-tobacco or anti-cigarette --
excuse me -- anti-cigarette and tobacco
statutes and laws from various states.
Included herein is a material that my
research assistant, Katie Harrison, we
were trying to find out when certain
features of the Kansas Anti-Cigarette Act
were no longer in effect, since certain
portions continued beyond 1927.

One of those features was the
banning of advertising. And we contacted
the head librarian at the University of
Houston law school library who said that
they could not provide us with that
information, but she gave us names of
friends of hers. And one of the people
she gave us was a Lissa Lord, with two Ss,
and Ms. Lord ran some documents which she
sent to us which as it turned out were not

1 relevant.

2 Q. Do you know what those documents are that
3 she ran that you think are not relevant?

4 A. They had to do with the taxation of
5 cigarettes. And I would assume that these
6 are Kansas session laws dated 1994; so
7 apparently her, I believe it was a
8 computer-generated Lexus search, would not
9 take the laws back through time. I don't
10 know why.

(Martin Exhibit No. 42 was
11 marked for identification
12 purposes.)

13 Q. (BY MR. LEYH) What's Exhibit 42?

14 A. Exhibit 42 would be Gallup poll
15 information. There are several published
16 volumes of Gallup polls, and the top pages
17 would be those. And because Gallup does
18 not publish all questions, I asked my
19 research assistant, Katie Harrison, to
20 contact the Roper Public Opinion Center at
21 the University of Connecticut and to do a
22 run of questions asked by the Gallup
23 organization between approximately 1935
24 and 1965. And the second part of this
25

document are the results of that
computer-generated run.

Q. Can you -- well, strike that.

Your report on Page 11 makes a
reference to a June 1954 Gallup question,
"Have you heard or read anything recently
to the effect that cigarette smoking may
be a cause of cancer of the lung?"

A. Yes.

Q. Can you find that, or is that question or
answer --

A. It's in here.

Q. It's not in this one?

A. It's not in that one.

Q. So what is contained in this exhibit are
two separate documents?

A. That's correct.

Q. Well, you tell me what the first one is.

A. One is the, just as I said, published
volumes which are available at almost any
research library in the United States, but
they do not reprint all the questions, and
I have no idea why. So you can work from
this document, but if you want greater
detail, you have to go to the Roper Center

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- 1 at the University of Connecticut; and if
2 you're willing to pay a premium, you can
3 get the additional questions.
- 4 Q. Do you know how much it cost?
- 5 A. Yes, it cost me \$250.
- 6 Q. Now, professor, with respect to the first
7 set of documents, not the complete polling
8 data, but the less than complete data, do
9 you know whether or not these questions
10 and answers are published
11 contemporaneously with the polling itself
12 in newspapers or magazines?
- 13 A. I would say it would have to depend on
14 each poll. I really can't say
15 specifically.
- 16 Q. Do you know which among all the questions
17 contained in both sets of documents in
18 Exhibit 42, which ones of them were
19 published and which ones were not,
20 questions and answers?
- 21 A. In newspapers?
- 22 Q. In any public outlet.
- 23 A. No, I can't.
- 24 Q. Okay. If I may, I'd like to flip through
25 this first set. Now, there is some

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1 highlighting apparently that's been copied
2 over. Is that your highlighting?

3 A. I'm sure it is.

4 Q. Okay. Here's a question apparently
5 from -- if we can just look at it
6 together. It looks like November 1
7 through 5 of 1949; is that right?

8 A. Yes.

9 Q. The question is: "Do you think cigarette
10 smoking is harmful or not," I believe.

11 A. Yes.

12 Q. And the population of cigarette smokers
13 indicated 52 percent said yes; and 45
14 percent, no; is that right?

15 A. That's correct.

16 Q. Does that suggest to you a high level of
17 public awareness that cigarette smoking is
18 a health risk?

19 A. Yes.

20 Q. Could you explain how you draw that
21 conclusion?

22 A. Because this is not an "are you aware"
23 question. This is a "believe" question:
24 Do you believe; do you think.

25 Q. Yes.

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1 A. And it would be very difficult to think or
2 believe if you weren't aware.

3 Q. All right. So thinking and believing is
4 at a deeper level of understanding; is
5 that a fair way of describing it?

A. I would certainly think so.

7 Q. Okay. And the awareness level is a more
8 superficial level of understanding?

A. Yes.

10 Q. As compared to the thinking or believing
11 level?

12 A. Yes.

13 Q. All right. Is it your opinion that
14 persons who answer affirmatively to think
15 or believe questions have a greater
16 appreciation of the subject of the
17 question?

18 MR. KACZYNSKI: Object to the
19 form.

20 A. Not necessarily.

21 Q. (BY MR. LEYH) Why not, if it's a deeper
22 level of understanding?

23 A. Well, they've gone through some sort of a
24 process as to whether the information that
25 they have received is -- whether they want

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in

1 to accept or not accept the information
2 that they have received. So there is a
3 second step, but I don't think that
4 necessarily is a deeper level of
5 thinking. It's a second consideration.

6 Q. It's quantitatively more thinking?

7 A. Yes.

8 Q. Okay.

9 A. Definitely.

10 Q. Now, on the next page, the e is some
11 yellow highlighting. Do you know who
12 wrote that?

13 A. Yes, that's my handwriting.

14 Q. Does that say "1954"?

15 A. Yes.

16 Q. All right. Is this the question that you
17 refer -- I guess it isn't the question
18 that you referred to. This question is,
19 from an interview dated June 12-17 of
20 1954. The question is: "What is your own
21 opinion? Do you think cigarette smoking
22 is one of the causes of lung cancer or
23 not?" 41 said yes; and 29, no; and 30,
24 undecided.

25 Does that suggest to you a high

1 level of public awareness about the health
2 risks?

3 A. Yes.

4 Q. Explain why.

5 A. Because that would mean in order to say a
6 yes or a no, you would have had to hear --
7 or even to be undecided, you would have
8 had to have heard that possibility.

9 Q. Okay. So when you use the term "public
10 awareness" in the context of your expert
11 opinion in this case, you're not talking
12 about people who necessarily believe
13 cigarette smoking --

14 A. That's correct.

15 Q. It is a health risk, but rather you're
16 talking about people who have heard
17 whether or not they believe it.

18 A. That's correct.

19 Q. And clearly some of the people who are
20 aware do not believe cigarette smoking is
21 a health risk; correct?

22 A. That is a possibility, yes.

23 Q. Well, in this particular question, at
24 least 29 percent in answer to this
25 question do not believe it, although in

1 your judgment they're aware?

2 A. That's correct.

3 Q. If I asked you about this question,
4 June 27 to July 2, 1957, about heart
5 disease, basically your answer would be
6 the same as the last question?

7 A. Exactly.

8 Q. Now, professor, there are a lot of
9 questions in this particular part of
10 Exhibit 42 that we're looking at that
11 relate to smoking and cancer; is that
12 right?

13 A. Yes.

14 Q. Why didn't you mention any of them in your
15 report?

16 A. Why didn't I mention? I did.

17 Q. Did you? Right here (indicating). I
18 meant from the exhibit we're looking at,
19 this part of Exhibit 42, the questions
20 I've asked you specifically about in the
21 last few minutes, for example.

22 A. Well, I'll go back to what I was asked to
23 consider, and I was asked to consider
24 public awareness which is not always the
25 same thing as public belief.

1 Q. Right. You've explained that.

2 A. Yes.

3 Q. But isn't the material in this published
4 set of questions and answers about which
5 we've been talking here, isn't it
6 additional evidence of awareness?

7 A. Yes.

8 Q. Okay. Why didn't you consider it in your
9 report expressly as additional evidence of
10 awareness?

11 A. Well, because there was a question as to
12 how long the report should be, and there
13 are so many different sources. I could
14 have gone into much more detail. I could
15 probably have given you 200 or 300 pages
16 from all of the various sources if we had
17 chosen to do that.

18 Q. I appreciate it.

19 A. Well --

20 Q. Have you finished your answer?

21 A. Yes.

22 Q. Did your decision to include the one
23 question that you included in your report
24 at Page 11 from this other list of
25 questions and answers you acquired have

1 anything to do with the fact that
2 90 percent answered "yes," and that's a
3 pretty high and clear and direct number?

4 A. That is an awareness question.

5 Q. Yes.

6 A. That is an awareness. I was asked to look
7 at questions about public awareness with
8 respect to knowledge about smoking and
9 possible health consequences.

10 Q. This also -- by "this," I'm referring to
11 questions we have been talking about --
12 this also tells you about awareness, I
13 think you've said.

14 A. That's right.

15 Q. This is a better awareness question
16 than --

17 A. That is an awareness question. These are
18 not awareness questions that we've been
19 talking about. They are belief questions.

20 Q. Which allow you to draw conclusions about
21 awareness?

22 A. No.

23 Q. I thought it was additional evidence of
24 awareness.

25 A. You don't need this evidence to have

1 awareness over there, but if we want this
2 to be additional evidence, we can have
3 this as additional evidence. Actually, I
4 cite two questions. I don't know why we
5 are just talking about one question.

6 Q. Okay. Well, the one question that I want
7 to talk about is the 1954 question, the
8 answer to which is 90 percent. Okay?

9 A. Uh-huh.

10 Q. If you want to add something about another
11 question, you can do that.

12 A. There's another question.

13 MR. KACZYNSKI: Wait until he
14 asks you a question.

15 THE WITNESS: I thought I was
16 answering his question.

17 Q. (BY MR. LEYH) My question, professor, is:
18 Did your decision to include the question
19 at the bottom of Page 11, the answer to
20 which is 90 percent, in your report have
21 anything to do with the fact that
22 90 percent of the people answered "yes"?

23 MR. KACZYNSKI: Asked and
24 answered.

25 MR. LEYH: Respectfully, I

1 think his answer was that it was an
2 awareness question.

3 A. That's my answer. It's an awareness
4 question.

5 Q. (BY MR. LEYH) Right. So does that mean
6 because it's an awareness question, your
7 decision to include that question had
8 nothing to do with the fact that
9 90 percent of the respondents answered
10 affirmatively?

11 A. It's the best awareness question that I'm
12 aware of from the 1950s.

13 Q. Is that the only reason that you put it in
14 your report?

15 A. No.

16 Q. What are the other reasons?

17 A. I was asked to prepare a report and to
18 review materials on public awareness with
19 respect to smoking and health. I was
20 asked a second question having to do with
21 public awareness with respect to the
22 alleged habit-forming and/or addictive
23 qualities with respect to smoking.

24 This question says: Have you seen
25 or heard, and why don't I quote it

1 directly, either from the report or from
2 this material.

3 Q. Would you like a copy of the report?

4 A. It would be faster to do it that way.

5 Q. Let me find you the exhibit that we've
6 marked.

7 A. And repeat the question.

8 Q. I forgot what the question was.

9 A. Was I supposed to read --

10 Q. I think you wanted -- did you want to look
11 at the second question? Is that what you
12 were shooting for?

13 A. Well, first question: "Have you heard or
14 read anything recently to the effect that
15 cigarette smoking may be a cause of cancer
16 of the lung?"

17 According to my report and
18 according to this question, 90 percent of
19 the respondents answered yes, 10 percent
20 answered no.

21 Second question that I put in here
22 from Gallup's pollsters in 1957: "Did you
23 happen to read or hear anything about the
24 recent report of the American Cancer
25 Society reporting the results of a study

1 on the effects of cigarette smoking?"

2 In this case, 78 percent of the
3 respondents answered yes; and among those
4 who were smokers at that time, 82 percent
5 responded yes.

6 Conclusion: "The general populous
7 and smokers in general indicated that they
8 were aware of the most recent study
9 relating to smoking and health."

10 Q. Now was that second quest on you read
11 contained in the more detailed version of
12 the Gallup poll that you separately
13 acquired?

14 A. I don't remember.

15 Q. All right.

16 A. It may be here, or it may be in here
17 (indicating). I don't know. I'm
18 confusing documents. That's my report. I
19 can't find it, so it must be in that one.

20 (Martin Exhibit No. 43 was
21 marked for identification
22 purposes.)

23 Q. (BY MR. LEYH) I have put a separate
24 exhibit sticker on th's document so that
25 we can keep track of them. Would you

1 identify Exhibit 43?

2 A. The "Gallup Poll of Public Opinion,
3 1935-1971," with additional questions of
4 various types and kinds attached.

5 Q. That's the less complete version of the
6 question and answers we've been
7 discussing; right?

8 A. This is the published version
9 (indicating). This is the unpublished
10 version (indicating).

11 Q. Doesn't that have more detailed
12 information about the questions and
13 answers?

14 A. No, that's what I thought when I started
15 this, but it doesn't. This has different
16 questions than this.

17 Q. I see.

18 A. So when I contacted, through my research
19 assistant, the Roper organization, I said
20 do a run of everything you had between
21 1935 and 1965. When this material came in
22 and I looked at it, I said but that
23 doesn't have all of these questions and
24 then some because I asked for everything.

25 So we called them up, and they

1 said, "Well, you'll have to go into
2 specific categories with us."

3 And at that point, I said, "I give
4 up." I received that in early January.

5 MR. KACZYNSKI: So we're
6 clear. That question, "Have you
7 heard about the report" is in
8 here.

THE WITNESS: Okay.

9 Q. (BY MR. LEYH) All right. Thank you.
10 Just so I'm clear, 43 is the published
11 version of the questions and answers, and
12 42 is the unpublished version?

13 A. Right.

14 Q. And the questions you cited in your report
15 come from 42, the unpublished version, the
16 specific questions on Pages 11 and 12?

17 A. The second question --

18 Q. I think counsel just indicated that the
19 second question --

20 MR. KACZYNSKI: I don't think
21 it means it's not in there, too.

22 THE WITNESS: I thought that
23 the second question came from here.

24 MR. KACZYNSKI: There it is.
25

1 A. "Did you happen" -- yes, it's from here.
2 So it's in both locations.

3 Q. (BY MR. LEYH) The first one is only in
4 42, and the second one is in both?

5 A. That's correct.

6 Q. All right. Do you know what criteria they
7 used to decide what to publish and what
8 not?

9 A. I haven't the slightest idea. It's a
10 very, very confusing area. It would just
11 be nice if they published everything, but
12 they don't.

(Martin Exhibit No. 44 was
marked for identification
purposes.)

13 Q. (BY MR. LEYH) Let me hand you Exhibit 44
14 and ask you to identify it.

15 A. Television transcripts; CBS News,
16 cigarette stories from the 1950s, "Surgeon
17 General Leroy Burney Links Smoking to
18 Cancer," and transcripts of the videotape,
19 two Edward R. Murrow programs, "See It
20 Now," May 31 and June 7, and apparently
21 duplicate copies.

22 Q. Where did you get those documents?
23
24
25

1 A. I'm not sure, so when I'm not sure, I'll
2 say that they were in the materials that
3 John Ettling gave to me.

4 Q. Did you read Exhibit 44 in the last five
5 months?

A. Yes.

(Martin Exhibit No. 45 was
marked for identification
purposes.)

10 Q. (BY MR. LEYH) What is Exh bit 45?

11 A. Could I qualify that?

12 Q. Yes.

13 A. I did not read the transcripts from the
14 videotapes because I watched them, so I
15 thought that would be redundant.

16 Q. What is 45?

17 A. 45 is a listing that Katie Harrison
18 prepared of the various American Cancer
19 Society anti-smoking public service
20 announcements from the 1960s and 1970s, so
21 they would be contained on one of the
22 tapes we talked about. There are
23 approximately 50 of these.

24 Q. Do you know when she prepared that?

25 A. We received that tape sometime in the

1 latter part of December, so it would be in
2 late December of 1995 or early January of
3 '96.

4 (Martin Exhibit No. 46 was
5 marked for identification
6 purposes.)

7 Q. (BY MR. LEYH) What is Exhibit 46?

8 A. Production figures; these are from the
9 annual statistics of the United States. As
10 I remember, I took these from a copy in my
11 office which is the 1970 edition, or
12 through 1970, "Physical Output of Selected
13 Manufactured Commodities: 1860 to 1970."
14 Provides information on the production of
15 tobacco products.

16 Q. Did you rely on that for your report in
17 this case?

18 A. Yes.

19 (Martin Exhibit No. 47 was
20 marked for identification
21 purposes.)

22 Q. (BY MR. LEYH) What's 47?

23 A. Circulation figures for The New York Times
24 and four national magazines, Reader's
25 Digest, Newsweek, Time, and Life beginning

1 in 1950 running through 1965, prepared by
2 Katie Harrison, taken from the Ayer's
3 Guide, which I believe is going to be the
4 next item.

5 Q. Okay. Did you ask her to prepare the
6 document 47?

7 A. Yes.

8 Q. And you used it in this case?

9 A. As background information, yes.

10 Q. All right. And did you select the
11 particular magazines and newspapers for
12 her to look up?

13 A. Yes. I did.

14 Q. Do you know if the Ayer's Guide contains
15 sports Illustrated?

16 A. I'm sure it does.

(Martin Exhibit No. 48 was
marked for identification
purposes.)

17 Q. (BY MR. LEYH) What is 48?

18 A. Well, it looks like the title page N. W.
19 Ayer & Son's -- these are standard guides,
20 well known -- Directory of Newspapers and
21 Periodicals. This particular one, this
22 volume is dated 1965. They come out
23
24
25

1 yearly, and they give circulation figures
2 for magazines and newspapers across the
3 United States.

4 (Martin Exhibit No. 49 was
5 marked for identification
6 purposes.)

7 Q. (BY MR. LEYH) What's 49?

8 A. Circulation figures from Ayer's for the
9 Kansas City Times; 1962 and 1964, drawn
10 from the Ayer's Guide.

11 (Martin Exhibit No. 50 was
12 marked for identification
13 purposes.)

14 Q. (BY MR. LEYH) And Exhibit 50?

15 A. Circulation figures drawn from the Ayer's
16 Guide, Kansas City Kansan; 1954-1957, 1962
17 and 1964.

18 Q. And did you ask Kelly Harrison to copy
19 that?

20 A. Katie.

21 Q. Katie Harrison?

22 A. Yes.

23 (Martin Exhibit No. 51 was
24 marked for identification
25 purposes.)

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1 Q. (BY MR. LEYH) What's Exhibit 51?

2 A. Springfield News and Leader, Missouri,
3 circulation figures from the Ayer's Guide;
4 1955-1960.

5 Q. Whose arrows and handwriting and marks are
6 on that document?

7 A. Well, that could be some unknown student
8 at the University of Houston.

9 MR. KACZYNSKI: Defacing
10 public property?

11 A. Defacing public property. This isn't
12 ours. This isn't our marking.

13 Q. (BY MR. LEYH) All right.

14 A. But that would be Katie Harrison's
15 handwriting.

16 Q. And it looks like there was some
17 defacement in the Springfield area here on
18 the second page of this document?

19 A. Yes.

20 Q. Is that there by design; do you know?

21 A. Maybe that is ink on this page. I can't
22 tell. No, because that information is
23 summarized in the sheets that we'll be
24 getting to in a moment.

25 Q. How are circulation numbers important to

1 you, if they were?

2 A. Well, it gives you the number of copies of
3 something that is put into circulation.
4 If I am going to say that Reader's Digest
5 was the most widely read magazine in the
6 United States or one of the most widely
7 read, it would hopefully be based on
8 something more substantial than thin air.
9 So you go to the Ayer's Guide. That would
10 be a standard procedure.

11 Q. Do you know how many people lived in
12 Springfield at the time you had these
13 numbers from the Ayer's Guide?

14 A. It will be in the chart coming up very
15 soon.

16 Q. I'm anxious to see it.

17 A. Okay. I am, too.

18 (Martin Exhibit No. 52 was
19 marked for identification
20 purposes.)

21 Q. (BY MR. LEYH) Exhibit 52?

22 A. Springfield Leader and Press, Missouri;
23 1955 to 1960.

24 (Martin Exhibit No. 53 was
25 marked for identification

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CONFERENCE

- 1 purposes.)
- 2 Q. (BY MR. LEYH) Exhibit 53?
- 3 A. Kansas City Star; same, Ayer's Guide;
- 4 1954, 1957, 1962, 1964.
- 5 Q. Did you look at that in the last five
- 6 months?
- 7 A. Yes.
- 8 Q. Did you look at all of these Ayer's Guide
- 9 documents in the last five months?
- 10 A. Yes.
- 11 (Martin Exhibit No. 54 was
- 12 marked for identification
- 13 purposes.)
- 14 Q. (BY MR. LEYH) What's 54?
- 15 A. Ebony and Jet circulation; 1957, 1960.
- 16 Q. Why did you want that?
- 17 A. Well, I looked at some materials from
- 18 Ebony magazine. We'll be getting to them.
- 19 Q. Why did you look at materials from Ebony?
- 20 A. Well, Ebony is a magazine which is, from
- 21 what I know about it, is a general
- 22 magazine that relates to issues in the
- 23 black community and is sold primarily to
- 24 black Americans.
- 25 Q. At the time you requested information

1 about circulation in Ebony, did you have
2 any reason to believe that David Burton
3 read Ebony magazine?

4 A. No.

5 Q. But you knew he was black?

6 A. Yes.

7 Q. Okay. That's the only reason you sought
8 out the information on Ebony magazine; is
9 that right?

10 A. Well, it's a magazine that was read widely
11 in the black community.

12 Q. He is black, and so therefore, you wanted
13 the information about Ebony?

14 A. Well, one would assume that had something
15 to do with it.

16 Q. Okay. I just want the record to be as
17 clear as possible about what the
18 assumptions are.

19 (Martin Exhibit No. 55 was
20 marked for identification
21 purposes.)

22 Q. (BY MR. LEYH) What's 55?

23 A. Kansas City Kansan, 1958 to 1963
24 circulation figures, Ayer's Guide.

25 (Martin Exhibit No. 56 was

1 marked for identification
2 purposes.)

3 Q. (BY MR. LEYH) That's 56 we're talking
4 about now. Ayer's Guide for what?

5 A. Ayer's Guide for, well, this says Kansas
6 City Star, Kansas City Times for 1960. I
7 think it must have been separated
8 accidentally from the other material.

9 (Martin Exhibit No. 57 was
10 marked for identification
11 purposes.)

12 Q. (BY MR. LEYH) Exhibit 57?

13 A. Circulation figures for the Emporia
14 Gazette; 1954 to 1965, drawn from the
15 Ayer's Guide.

16 (Martin Exhibit No. 58 was
17 marked for identification
18 purposes.)

19 Q. (BY MR. LEYH) What is 58?

20 A. Life magazine circulation figures drawn
21 from the Ayer's Guide, 1950 to 1965.

22 (Martin Exhibit No. 59 was
23 marked for identification
24 purposes.)

25 Q. (BY MR. LEYH) What's 59?

1 A. Circulation figures, Newsweek magazine,
2 drawn from the Ayer's Guide, 1950 to 1965.

3 (Martin Exhibit No. 60 was
4 marked for identification
5 purposes.)

6 Q. (BY MR. LEYH) What is 60?

7 A. Circulation figures, Time magazine, 1950
8 to 1965, drawn from the Ayer's Guide.

9 (Martin Exhibit No. 61 was
10 marked for identification
11 purposes.)

12 Q. (BY MR. LEYH) And what is Exhibit 61?

13 A. Circulation figures, The New York Times,
14 1950 to 1965, drawn from the Ayer's Guide.

15 (Martin Exhibit No. 62 was
16 marked for identification
17 purposes.)

18 Q. (BY MR. LEYH) Exhibit 62?

19 A. Reader's Digest circulation figures, 1950
20 to 1965, drawn from the Ayer's Guide.

21 (Martin Exhibit No. 63 was
22 marked for identification
23 purposes.)

24 Q. (BY MR. LEYH) What is Exhibit 63?

25 A. Miscellaneous materials from --

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in
CONFERENCE

- 1 miscellaneous anti-cigarette materials.
- 2 Q. Did you read these materials in 63 in the
- 3 last five months?
- 4 A. I think I did, yes.
- 5 Q. Do you know where you got these, Exhibit
- 6 63?
- 7 A. No, I really don't. I really don't recall
- 8 specifically.
- 9 Q. All right.
- 10 (Martin Exhibit No. 64 was
- 11 marked for identification
- 12 purposes.)
- 13 Q. (BY MR. LEYH) What is 64?
- 14 A. A miscellaneous article drawn from the
- 15 Science Newsletter, dated March 18, 1961,
- 16 where a British surgeon calls smoking drug
- 17 addiction.
- 18 Q. Do you know whether or not in 1961 any of
- 19 the tobacco companies in the United States
- 20 thought that cigarette smoking -- excuse
- 21 me -- thought that nicotine was addicting?
- 22 A. I said earlier, I haven't looked at
- 23 tobacco company documents.
- 24 Q. Well, do you know from any other source
- 25 whether or not the companies in '61

1 thought that nicotine was addicting?

2 A. No, I do not.

3 (Martin Exhibit No. 65 was
4 marked for identification
5 purposes.)

6 Q. (BY MR. LEYH) 65?

7 A. Consumer Reports from April of '51 through
8 October of 1965.

9 Q. Now there's some yellow Post-its
10 attached. Did you place those?

11 A. Yes, I did.

12 Q. Is your handwriting on the Post-its on the
13 documents in Exhibit 65?

14 A. Yes, it is.

15 Q. Have you read those in the last five
16 months?

17 A. Yes, I did. I read these actually in the
18 last two weeks because I didn't know I had
19 them. I found them in the Ettling
20 materials, and I pulled them out and read
21 them within the last two to two and a half
22 weeks.

23 Q. Have you read them prior to your
24 preparation of your expert report?

25 A. No, I haven't.

1 Q. So you didn't rely on them for that?

2 A. Not for the expert report, no.

3 (Martin Exhibit No. 66 was
4 marked for identification
5 purposes.)

6 Q. (BY MR. LEYH) What is Exhibit 66?

7 A. Title pages from two volumes dealing with
8 television programming. I asked Katie
9 Harrison to go to our library and see if
10 she could come up with materials that
11 would at least give us a sense of when
12 certain kinds of programs were on and why
13 and any information about those programs.
14 One of these has to do with the "See It
15 Now" program in a general sense.

16 (Martin Exhibit No. 67 was
17 marked for identification
18 purposes.)

19 Q. (BY MR. LEYH) What is Exhibit 67?

20 A. Slang terms related to tobacco with copies
21 of the volumes from which this material,
22 the summary sheet was drawn.

23 Q. Who prepared the summary sheet?

24 A. Katie Harrison.

25 Q. Did you ask her to look at the slang

1 terms?

2 A. Yes.

3 Q. Is it fair to say that over time those
4 terms change in meaning?

5 A. I don't believe we call the term "fag" an
6 inferior cigarette anymore.

7 Q. That's a "yes," I guess?

8 A. Yes.

9 Q. Did you look at this stuff in order to
10 prepare your expert report?

11 A. Yes.

12 Q. All right.

13 (Martin Exhibit No. 68 was
14 marked for identification
15 purposes.)

16 Q. (BY MR. LEYH) And what is 68, please?

17 A. A copy of a Ladies Home Journal article,
18 dated November 1961, dealing with a group
19 who went through a program to stop
20 smoking.

21 Q. Did you read that in the last five months?

22 A. Yes.

23 (Martin Exhibit No. 69 was
24 marked for identification
25 purposes.)

1 Q. (BY MR. LEYH) What is 69?

2 A. This is a book entitled To Smoke or Not To
3 Smoke, Lothrop, Lee & Shepherd publishers,
4 New York, by Luther Terry, Surgeon General
5 at the time of the issuing of the 1964
6 report, and Daniel Horn, involved in the
7 cancer retrospect -- I'm sorry, cancer
8 perspective studies of the 1950s,
9 copyright 1969. This is a book for
10 children to teach them about health
11 problems related to smoking.

12 Q. Have you read that in the last five
13 months?

14 A. No.

(Martin Exhibit No. 70 was
marked for identification
purposes.)

15 Q. (BY MR. LEYH) What's Exhibit 70?

16 A. David Burton, this is the David Burton
17 deposition, dated November 7, 1994,
18 Volume I; and I believe there is a second
19 deposition, the second part, Volume II,
20 dated November 8, 1994.

21 Q. Have you read both volumes of Mr. Burton's
22 deposition?
23
24
25

1 A. Yes.

2 Q. I noticed in Volume I some highlighting
3 had been copied over, so there's some
4 blackened marks. Do you know whose
5 highlighting that is?

6 A. No.

7 Q. Is it yours?

8 A. No.

9 Q. You didn't make any marks in either
10 volume?

11 A. No.

12 Q. What else is in that exhibit?

13 A. "First Amended Complaint, Mr. David Burton
14 vs. R. J. Reynolds Tobacco Company and The
15 American Tobacco Company."

16 Q. Did you read that document?

17 A. Yes.

18 Q. Do you know approximately when you were
19 provided with that document?

20 A. I would guess approximately six weeks to
21 two months ago.

22 "David Burton and Ora Burton,
23 Plaintiffs vs. R. J. Reynolds Tobacco
24 Company, Memorandum and Order," dated
25 3-13-95.

1 Q. Did you read that document?

2 A. Yes.

3 Q. Within the last six weeks or so?

4 A. Yes.

5 Q. Do you recall the Court's discussion of
6 warnings?

7 A. Well, I marked something in here. No, I
8 don't recall at this particular point.

9 Q. Where did you mark; on what page?

10 A. There are all sorts of markings in here.

11 Well, I had a question mark; I guess I put
12 this in here. This is on Page 23. It

13 said that "the addictive qualities of
14 cigarettes may have been" -- "the ordinary
15 consumer's knowledge concerning the

16 addictive qualities of cigarettes may have
17 been when (plaintiff) began smoking in
18 1940." I put a question mark there. I

19 thought that was possibly an erroneous
20 date because if I'm not mistaken, he would
21 have been five years old at that time.

22 Q. Do you think that's a material difference
23 in the Court's remarks?

24 MR. YACZYNSKI: Objection.

25 Q. (BY MR. LEYH) If you know.

1 A. I don't have any idea.

2 Q. Okay. What else did you mark, any other
3 particular issues?

4 A. Well, there's a marking here: "It is
5 interesting that in the context of
6 defending this lawsuit defendants contend
7 that the dangerous properties of
8 cigarettes are common knowledge, while
9 less than one year ago they testified in
10 front of Congress that certain claimed
11 dangerous propensities of their products
12 did not exist at all."

13 Q. Why did you mark that?

14 A. I have no idea at this point. It was
15 probably my attempt to understand what
16 this document was about. This is the
17 first time I had ever read this kind of a
18 document.

19 Q. Do you recall the representatives of the
20 tobacco companies testifying in front of
21 Congressman Waxman's committee and saying
22 that they believed, under oath, cigarettes
23 and nicotine were not addictive?

24 A. Yes.

25 Q. Did you find that interesting?

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in
HUMPHREY

1 A. I saw it on television.

2 Q. Did you find it ironic, given what you've
3 described here today and in your expert
4 report as common knowledge --

5 A. I think we are going to go right back and
6 go over our discussion about the meaning
7 of addiction again. If you would like to
8 do that, I'm ready.

9 Q. I really don't want to do that. This is a
10 new subject, professor. It has to do with
11 whether or not the testimony --

12 A. This is not new testimony.

13 Q. It's new in the sense that it has to do
14 with the testimony in front of the Waxman
15 committee. Did I ask you this morning
16 about the CEO's testimony?

17 A. I'm sure it was mentioned, but at this
18 point, I'm having a hard time recalling.

19 Q. Do you have an opinion as to whether or
20 not it's ironic that the CEOs testified as
21 they did in light of your statements about
22 the public awareness of addiction?

23 MR. KACZYNSKI: Objection.

24 A. No, I don't have an opinion.

25 Q. (BY MR. LEYH) Do you have any opinion at

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1 all with respect to the testimony of the
2 tobacco companies' CEOs regarding the
3 nonaddicting --

4 A. Once again, I was asked to investigate
5 materials relating to smoking and possible
6 health issues in the period from the early
7 eighteenth century through the mid-1960s,
8 and I was asked to look at those same
9 questions with respect to public awareness
10 and the possible addictive qualities or
11 habit-forming qualities of smoking for the
12 same period.

13 Q. Now would you answer my question.

14 A. I answered your question this morning when
15 I said the term "addiction" has pretty
16 much ceased to have much meaning in our
17 society. That's my personal opinion.

18 Q. And is it your opinion that when the CEOs
19 of the tobacco companies said they
20 believed nicotine was not addictive --

21 A. I said --

22 Q. Let me finish. Their use of the word was
23 meaningless or without much meaning.

24 MR. KACZYNSKI: Objection.

25 A. You are asking me to tell you what those

1 individuals are saying. I don't have the
2 slightest idea of what those individuals
3 are saying. I'm sure that in the context
4 of that discussion, there was some
5 definition of addiction written somewhere,
6 someplace, sometime that Congressman
7 Waxman was holding them to. I don't have
8 any knowledge of what that definition
9 would have been.

10 Q. (BY MR. LEYH) Does it strike you as
11 ironic that they would say what they said
12 about nicotine and addiction, given what
13 you claim to know about the public
14 awareness of nicotine as an addiction,
15 source of addiction?

MR. KACZYNSKI: Objection.

16 A. No.

17 Q. (BY MR. LEYH) Why not?

18 A. No.

19 Q. Why?

20 A. Because it doesn't strike me as ironic.

21 Q. For what reasons?

22 A. For what reasons?

23 Q. Yes, do you have any reasons for that
24 opinion?
25

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1 A. In order to have irony, the two items must
2 bear some relationship. And in one case
3 in the late 1980s, you are talking about a
4 scientific definition that has been
5 provided apparently by the Surgeon
6 General; and back in the 1940s and 1950s
7 all the way back until King James I, we
8 were talking about other definitions much
9 more general which, as I've stated
10 repeatedly today, were an indication that
11 it would be difficult to quit smoking.

12 In irony you must have properties
13 which bear on each other; and what I'm
14 saying is that until you have this formal
15 scientific definition, in the late 1980s
16 you have terms as various as "bewitching,"
17 "enslaving," "artificial passion,"
18 "addicted to the cigarette habit," and on
19 and on, all of which make it clear that if
20 you start smoking it may be difficult to
21 quit.

22 Q. Don't the meanings at both points in time,
23 1996 and when you were doing your
24 research, at least bear on the sense in
25 which cigarette smoking is habit-forming

1 behavior or addictive behavior. Isn't
2 there that commonality to the various
3 definitions of "addiction"?

4 A. Well, I'm not sure there is that
5 commonality because in one case we had a
6 public pronouncement by a public health
7 official that said we define this for all
8 time; and in the other case, we had a
9 series of popular definitions that rolled
10 through society over a 300- to a 350-year
11 period.

12 Q. And the public official you're talking
13 about that said we should define addiction
14 this way for all time, is that the Surgeon
15 General?

16 A. I believe so, yes.

17 Q. Is this the report that you haven't read?

18 A. That's right.

19 Q. You don't know how he defined it in that
20 report, do you?

21 A. No, I do not.

22 Q. Why do you say he defined it for all time
23 or he thought he was defining it for all
24 time?

25 A. Because it was an official pronouncement

1 from the United States Government with the
2 imprimatur from the Surgeon General.

3 Q. So any official pronouncement of a
4 scientific concept in your judgment was an
5 official pronouncement for all time?

6 A. That's not what I said.

7 Q. Is it the case?

8 A. That's not what I said.

MR. KACZYNSKI: Objection.

9
10 Q. (BY MR. LEYH) Is it the case nonetheless
11 that any time an official organization of
12 the Government defines a concept, they are
13 maintaining it for all time?

14 A. No.

15 Q. Why do you say that's what the Surgeon
16 General did, then?

17 A. The Surgeon General decided that he wanted
18 to make a certain kind of a definition,
19 for all I know -- since I haven't read it,
20 I don't know why we're having this
21 discussion, if I can make that point for
22 the 28th time today.

23 Q. You don't have any particular knowledge on
24 the Surgeon General's report; is that
25 right?

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1 A. That's right because I haven't read it.

2 Q. Now, tell me why you think the Surgeon
3 General was defining addiction for all
4 time.

5 A. Because I think that it is what he wanted
to do.

7 Q. What makes you think that's what he wanted
8 to do?

9 A. Because he was C. Everett Koop.

10 Q. What does that mean?

11 A. That C. Everett Koop wanted a specific
12 definition of addiction so that cigarettes
13 could therefore be declared legally
14 addictive and therefore subject to all
15 sorts of federal regulations that they
16 would not otherwise be subject to.

17 Q. I see. You believe he wanted the
18 Government to regulate, and that colored
19 his definition of addiction in the '88
20 report?

21 A. I haven't read the '88 report, so I don't
22 know whether that's the case or not; but
23 my guess is that may have had something to
24 do with it.

25 Q. In any case, that's your suspicion about

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1 C. Everett Koop's --
2 A. If I would research that, that would be
3 something that I would want to
4 investigate; that's correct. Whether
5 that's a possibility, it may be true or it
6 may not be true but it could be a
7 suspicion.

8 Q. Well, it is a suspicion of yours, isn't
9 it?

10 A. I said it could be a suspicion.

11 Q. Now, do you know who the editors, the
12 senior editors, of the report were?

13 A. I haven't read the report.

14 Q. So what? I asked you if you knew who the
15 senior editors were.

16 A. No.

17 Q. All right. Nobody has told you, in other
18 words, anything about who contributed
19 material to the '88 report; is that right?

20 A. No.

21 MS. McDOLLE: Okay. I think
22 we should take a break. You two
23 need to take a break.

24 MR. LEYH: I'm ready to
25 continue. If you folks want to

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1 take a break, then take a break.
2 If you want to do this for 24 or 48
3 hours --

4 MS. McDOLE: I think --
5 Wait.

6 MR. LEYH: It's not my call.

7 MS. McDOLE: You don't need
8 to argue.

9 MR. LEYH: Is it \$110 an
10 hour?

11 MS. McDOLE: You're asking
12 argumentative questions.

13 MR. LEYH: We're off the
14 record.

15 MS. McDOLE: No, we're not
16 off the record.

17 MR. LEYH: All right. I'm
18 not asking argumentative
19 questions. I'm probing the
20 witness' opinions. He doesn't want
21 to answer about anything beyond the
22 four corners of his document, and
23 I'm entitled to ask him questions
24 that go well beyond the four
25 corners of his document. That's

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1 what I've been doing.

2 MS. McDOLE: I think we've
3 been here all day long and listened
4 to you ask questions and him give
5 answers that are well beyond the
6 four corners of the document.
7 You're asking very argumentative
8 questions, you're on the edge of
9 your seat, you're halfway over the
10 table, and you're raising your
11 voice. We're taking a break.

12 MR. LEYH: That's not true.
13 I'm not halfway over the table.

14 (A short recess was taken.)

15 Q. (BY MR. LEYH) We're looking at the
16 Court's Memorandum and Order which is
17 contained in Exhibit 70.

18 (Mr. Kaczynski left the
19 deposition room.)

20 Q. (BY MR. LEYH) I've got the Order opened
21 up to Page 21 where you've made a mark in
22 the margins with respect to a quote.
23 Well, let me just read it. It says, "The
24 relevant inquiry is 'whether the evidence
25 presents a sufficient disagreement to

1 require submission to a jury or whether it
2 is so one-sided that one party must
3 prevail as a matter of law.'"

4 Is it your opinion just as it
5 relates to the public awareness
6 information in your expert report that the
7 information is very, very one-sided on the
8 side of lots of public information about
9 the health risks?

10 A. Yes.

11 Q. And you read this when? When did you read
12 this initially?

13 A. Well, I had to read it sometime before I
14 filed the report because it's in the
15 bibliography. I'd say it came in about
16 the middle of December.

17 Q. So you knew that was the standard before
18 you wrote your report?

19 MS. McDOLLE: Objection to the
20 form of the question; standard for
21 what?

22 Q. (BY MR. LEYH) Strike that. You knew that
23 was a part of the Court's reasoning in
24 this Memorandum opinion; correct?

25 A. Yes, and I would probably have known that

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EXHIBIT

1 if the preponderance of evidence points in
2 a certain direction, that would determine
3 a case.

4 Q. On summary judgment?

5 A. Well, I wasn't picking up on that
particular angle.

7 Q. On Page 22, there are a couple of other
8 cases mentioned in a passage that you've
9 flagged, Roysdon and Paugh. Have you
10 read the opinions in those cases?

11 A. No.

12 Q. Has anyone described them to you?

13 A. No.

14 Q. The question mark you put on Page 23 next
15 to the year 1940, that's a quote from the
16 Rogers case; is that right?

17 A. "Stated in Rogers v. R. J. Reynolds...
18 there is no basis for our judicially
19 noticing what the ordinary consumer's
20 knowledge concerning" -- oh, it's from the
21 Rogers case.

22 Q. When you put that question mark you
23 thought it was a Burton case?

24 A. I think I was assuming it was the Burton
25 case. I just -- frankly as a historian we

1 don't put our, I don't know what you
2 describe these as, parenthetical notes, we
3 don't put them in the text. We put them
4 at the bottom of the page or elsewhere.
5 I'm sure that as I was reading this, I
6 skipped over it.

7 Q. Page 25, you've got an "N" in the margin.
8 What does that mean?

9 A. Not sure.

10 Q. Is that to designate it as particularly
11 important to you?

12 A.

13 Q. Okay. What about that passage is of
14 particular importance?

15 A. The mere fact that plaintiff was aware of
16 some dangers relating to the use of
17 cigarettes does not necessarily
18 automatically insulate defendants from
19 warning of other dangers of which
20 plaintiff may have been unaware."

21 Q. What, if any, conclusions did you draw
22 about that?

23 A. I think I noted it because it was a
24 concept that I thought was interesting,
25 perhaps, and I didn't understand because

1 I'm not used to reading these kinds of
2 documents.

3 Q. Is there any more that you can tell me
4 about why you thought that concept was
5 interesting?

6 A. I guess, yes, because we're talking about
7 dangers in one category do not
8 automatically affect dangers in another
9 category, and that may have been something
10 that I was unfamiliar with as a concept.

11 Q. Can you tell me why you made that marginal
12 note on Page 27?

13 A. I guess I must have been interested that
14 this information was available. "And a
15 videotape" -- it says, "38 television
16 commercials for Camel and Lucky Strike
17 cigarettes."

18 Q. You didn't ask for that tape, did you, or
19 any of that information?

20 A. No, I didn't.

21 Q. Okay. What is the last document in
22 Exhibit 70?

23 A. "In the United States District Court for
24 the District of Kansas, David Burton,
25 Plaintiff, vs. R. J. Reynolds Tobacco

1 Company and The American Tobacco Company,
2 Defendants; Answer to First Amended
3 Complaint and Affirmative Defenses of
4 R. J. Reynolds Tobacco Company."

5 Q. Did you read that?

6 A. Yes.

7 Q. What, if anything of significance, did you
8 take from it?

9 A. I took virtually nothing of significance
10 from it because I'm not sure I understood
11 the document.

12 (Martin Exhibit No. 71 was
13 marked for identification
14 purposes.)

15 Q. (BY MR. LEYH) What is Exhibit 71?

16 A. Benjamin Rush's essays; 1798; entitled
17 "Observations Upon the Influence of the
18 Habitual Use of Tobacco Upon Health,
19 Morals, and Property," included in his
20 volume, "Essays, Literary, Moral, and
21 Philosophical"; and a copy of the Rush's
22 "Moral and Physical Thermometer."

23 Q. Where did you get Exhibit 71?

24 A. From the Rice University Library microfilm
25 or microfiche collection.

1 Q. When did you get it?

2 A. I'm going to guess the fall of 1994 or
3 early 1995.

4 Q. Did you want to get it in order to learn
5 more about tobacco-related matters --

6 A. Yes.

7 Q. -- in the context of litigation?

8 A. Yes.

9 Q. Okay. Have you read it in the last five
10 months?

11 A. Yes.

12 (Martin Exhibit No. 72 was
13 marked for identification
14 purposes.)

15 Q. (BY MR. LEYH) What's Exhibit 72?

16 A. A Counterblaste to Tobacco, imprinted at
17 London, year 1604, written by King
18 James I. This is a copy of the complete
19 pamphlet that was published in a modern
20 collection entitled Minor Prose Works of
21 King James VI and I, published by the
22 Scottish Text Society, Edinburgh, in 1982.

23 Q. Have you read it in the last five months?

24 A. Yes.

25 Q. Where did you get it?

1 A. This volume wasn't in the University of
2 Houston Library, so we get it through
3 interlibrary loan.

4 Q. You specifically sought that volume?

5 A. This?

6 Q. Yes.

7 A. Yes.

8 (Martin Exhibit No. 73 was
9 marked for identification
10 purposes.)

11 Q. (BY MR. LEYH) What's 73?

12 A. Notes from the trip that I took. I have
13 been aware for years and years of the
14 Arents Tobacco Collection at the New York
15 Public Library. It's the most detailed
16 collection in the United States, if not
17 the world, having to do with tobacco
18 materials. And when Mr. Kaczynski and
19 Mr. Koethe asked me about perhaps doing
20 some research, I said that I thought that
21 going to the Arents Collection was a
22 fundamental activity, and these are the
23 notes from two days at the Arents
24 Collection.

25 Q. When did you go there?

- 1 A. July of 1994.
- 2 Q. And did they pay for the visit?
- 3 A. Yes.
- 4 Q. Did you manage to review everything at the
- 5 collection?
- 6 A. That would have been an impossibility.
- 7 Q. Okay.
- 8 A. Two years might have been possible.
- 9 Q. What sorts of documents, if you can
- 10 generalize, did you want to review, in
- 11 fact, review in your two days there?
- 12 A. Well, the kinds of documents that dealt
- 13 with everything, I think, right up front
- 14 in terms of key words, anti-tobacco,
- 15 activity, attitudes towards the
- 16 therapeutic use of tobacco, questions
- 17 regarding nicotine diseases and ailments,
- 18 and the medicinal use of tobacco.
- 19 Q. How long have you been working on your
- 20 book on smoking?
- 21 A. We signed a contract for that book in
- 22 approximately July of 1995.
- 23 Q. When did you first decide that you wanted
- 24 to write such a book?
- 25 A. When Mark Lender and I did the research

1 for Drinking in America, we constantly ran
2 across materials relating to both drinking
3 and smoking and the relationship between
4 the two. We commented at that time, this
5 would have been in the late 1970s, that
6 this would be a good project to turn to at
7 some future point.

8 What intervened in the meantime was
9 that I left Rutgers University and moved
10 to the University of Houston, and we were,
11 instead of being a few miles apart, we
12 were now 1,500 miles apart. So we did not
13 pursue this particular topic at that time.

14 Q. Have either or both of you ever applied
15 for any grant money to help defray the
16 costs of preparing the book?

17 A. Grant money?

18 Q. Yes, from any source.

19 A. No.

20 Q. Do you know whether or not Professor
21 Linder has been consulting with tobacco
22 companies?

23 A. No, I don't.

24 (Martin Exhibit No. 74 was
25 marked for identification)

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purposes.)

Q. (BY MR. LEYH) What's Exhibit 74?

A. Mr. Fowler's Disquisition on the Evils of Using Tobacco, by Orin Fowler, published in 1833.

Q. Have you read that in the last five months?

A. I've reviewed it in the last five months.

Q. Where did you get it?

A. I can't remember.

Q. Okay.

(Martin Exhibit No. 75 was marked for identification purposes.)

Q. (BY MR. LEYH) What's 75?

A. Tobacco: Its History, Nature, and Effects on the Body and Mind, by Joel Shew, S-h-e-w, M.D.

Q. Have you read that in the last five months?

A. I've reviewed it in the last five months.

Q. Do you know where you got it?

A. No, I don't recall.

(Martin Exhibit No. 76 was marked for identification

1 purposes.)

2 Q. (BY MR. LEYH) Okay. What's 76?

3 A. The title of this publication is Thoughts
4 and Stories on Tobacco for American Lads,
5 or Uncle Toby's Advice to His Nephew Billy
6 Bruce, published anonymously in 1852 but
7 written by the Rev. George Trask,
8 T-r-a-s-k.

9 Q. Where did you get that?

10 A. Through interlibrary loan, I believe.
11 This volume if we can find it, I think it
12 came from a college, Bowdoin College, in
13 Maine, B-o-w-d-o-i-n.

14 Q. Have you read this in the last five
15 months?

16 A. Yes.

17 (Martin Exhibit No. 77 was
18 marked for identification
19 purposes.)

20 Q. (BY MR. LEYH) What's 71?

21 A. "A Mediation on" --

22 MS. McDOLLE: Wait. 77.

23 Q. (BY MR. LEYH) Sorry, 77.

24 A. "A mediation on Tobacco," published in
25 1855, by N.P.Y. in the, looks like,

1 National Magazine.

2 Q. Have you read it in the last five months?

3 A. Yes, I either read it or reviewed it.

4 Q. Where did you get it?

5 A. I'm not sure.

6 (Martin Exhibit No. 78 was
7 marked for identification
8 purposes.)

9 Q. (EY MR. LEYH) Exhibit 78?

10 A. "A New Counterblaste," appeared in
11 Atlantic, December 1861. I thought the
12 author -- I can't find the author on
13 this. It may be here somewhere. If I
14 could look up my report, I could see where
15 there's a listed author.

16 Q. It's not important. Let's just go on.

17 A. Okay.

18 (Martin Exhibit No. 79 was
19 marked for identification
20 purposes.)

21 Q. (EY MR. LEYH) 79?

22 A. "Tobacco: Its Use and Abuse."

23 Q. Have you read that in the last five
24 months?

25 A. Yes, I reviewed this in the last five

1 months.

2 Q. Do you know where you got it?

3 A. I don't recall.

4 (Martin Exhibit No. 80 was
5 marked for identification
6 purposes.)

7 Q. (BY MR. LEYH) What's Exhibit 80?

8 MS. McDOLLE: Where's Exhibit
9 73? There's 71, 72 and 74.

10 MR. LEYH: I'm sure I
11 couldn't have misnumbered them.

12 Q. (BY MR. LEYH) 80?

13 A. John Griscom, The Use of Tobacco and the
14 Evils... Resulting Therefrom; published in
15 1868; got this from the Library of
16 Congress.

17 Q. Read it in the last five months?

18 A. Yes

19 (Martin Exhibit No. 81 was
20 marked for identification
21 purposes.)

22 Q. (BY MR. LEYH) Exhibit 81?

23 A. John C. Draper, "Tobaccophagoi and
24 Tobaccophagism."

25 Q. Where did you get that document?

1 A. Galaxy magazine, June 1870. I don't
2 know. I don't recall at this point.

3 Q. Have you read that in the last five
4 months?

5 A. Yes, I reviewed this.

(Martin Exhibit No. 82 was
marked for identification
purposes.)

6 Q. (BY MR. LEYH) Exhibit 82?

7 A. "Our Fashionable Narcotic," written by
8 Rev Fry, appeared in the
9 Ladies' Repository, January 1870.

10 Q. Where did you get it?

11 A. I can't be sure.

12 Q. Have you read it in the last five months?

13 A. Yes.

(Martin Exhibit No. 83 was
marked for identification
purposes.)

14 Q. (BY MR. LEYH) Exhibit 83?

15 A. John Cowan, The Use of Tobacco vs. Purity,
16 Chastity and Sound Health, published in
17 1870. This includes only the table of
18 contents. We have been trying to get this
19 volume through interlibrary loan, and the
20
21
22
23
24
25

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1 only copy apparently in existence of the
2 full text is in the Arents Collection.

3 Q. Do you know where you got that?

4 A. Where I got this particular document?

5 Q. Yes.

6 A. No, I don't know where I got that copy.

7 (Martin Exhibit No. 84 was
8 marked for identification
9 purposes.)

10 Q. (BY MR. LEYH) What is Exhibit 84?

11 A. The Tobacco Plug and Cigar. I can't find
12 the author, although I don't know why;
13 published in 1875.

14 Q. Do you know where you got it?

15 A. I thought this one came from the Library
16 of Congress and there's no marking and the
17 title page seems to be missing. So I
18 would have to answer I just don't know.

19 Q. Have you read that in the last five
20 months?

21 A. I've reviewed it, yes.

22 (Martin Exhibit No. 85 was
23 marked for identification
24 purposes.)

25 Q. (BY MR. LEYH) What is 85?

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1 A. B. W. Chase, Tobacco: Its Physical,
2 Mental, Moral and Social Influences;
3 published in 1878.

4 Q. Have you read that within the last five
5 months?

6 A. Yes.

7 (Martin Exhibit No. 86 was
8 marked for identification
9 purposes.)

10 Q. (BY MR. LEYH) 86?

11 A. This is actually a three-in-one pamphlet.
12 So I'll just give the first one, if that's
13 okay. Anti-Tobacco; by Abiel, A-b-i-e-l,
14 Abbot Livermore and others; published in
15 1888.

16 Q. Do you know where you got it?

17 A. Yes, the Library of Congress.

18 Q. And have you read it in the last five
19 months?

20 A. Yes.

21 (Martin Exhibit No. 87 was
22 marked for identification
23 purposes.)

24 Q. (BY MR. LEYH) What's 87?

25 A. Charles Towns, "The Injury of Tobacco and

1 Its Relation to Other Drug Habits"; dated
2 March 1912; Century magazine.

3 Q. Read it in the last five months?

4 A. Yes.

5 Q. Do you know where you got it?

6 A. No, I don't remember.

7 (Martin Exhibits Nos. 88
8 through 102 were marked for
9 identification purposes.)

10 MS. McDOLE: Do you want to
11 put the whole stack in front of
12 him?

13 MR. LEYH: Why didn't I think
14 of that?

15 MS. McDOLE: For the record,
16 say what the next exhibit is.

17 THE WITNESS: Do you want me
18 to keep going?

19 MS. McDOLE: I think so.

20 A. Oh, okay. Exhibit No. 88, "The Truth
21 About Tobacco", by F. C. Walsh; the
22 Technical World, in 1914.

23 Q. (BY MR. LEYH) Read it in the last five
24 months?

25 A. I believe I've reviewed that one in the

1 last five months.

2 Q. Do you know where you got it?

3 A. I don't recall.

4 Q. Okay.

5 A. Exhibit No. 89, The Little White Slaver,
6 by Henry Ford and others, published in a
7 complete volume in 1916.

8 Q. Read it in the last five months?

9 A. Yes.

10 Q. Where did you get it?

11 A. Through interlibrary loan.

12 Exhibit No. 90, The Brown God and
13 His White Imps or the Evils of Tobacco and
14 Cigarettes..., Theo F. Frech and L. H.
15 Higley, published in 1916.

16 Q. Five months?

17 A. Yes.

18 Q. Where?

19 A. I believe this one is from the Library of
20 Congress.

21 Q. Okay.

22 A. No. 91, Tobaccoism, by John Harvey
23 Kellogg. This is the revised edition,
24 published in 1937; original edition in
25 1922.

1 Q. Do you know where you got it?

2 A. Yes, I think this is from the Library of
3 Congress, but I'm not positive.

4 Q. Have you read that in the last five
5 months?

6 A. Yes.

7 Q. Thank you.

8 A. Michael -- I'm sorry. This is No. 92.

9 Tobacco and Mental Efficiency,
10 M. V. O'Shea; published in 1923.

11 Q. Where did you get it?

12 A. This is from interlibrary loan.

13 Q. And have you read that in the last five
14 months?

15 A. I've given this a very quick scan because
16 it only came in, I would say, around the
17 middle of December.

18 Q. Okay.

19 A. Jack Gottsegen, this is No. 93. Tobacco:

20 A Study of Its Consumption in the United
21 States, published in 1940.

22 Q. Have you read it in the last five months?

23 A. I've reviewed this within the last five
24 months.

25 Q. Where did you get it?

1 A. Well, perhaps it was through interlibrary
2 loan. It says the New York Public Library
3 on the front.

4 Q. Okay.

5 A. 94, collection of essays by Ernest Wynder,
6 W-y-n-d-e-r, The Biologic Effects of
7 Tobacco, published in 1955.

8 Q. Have you read that in the last five
9 months?

10 A. I've reviewed it in the last five months.

11 Q. Okay.

12 A. No 95, Science Looks at Smoking. A New
13 Inquiry Into the Effects of Smoke on Your
14 Health, by Eric Northrup, published in
15 1957.

16 Q. Where did you get it?

17 A. Through interlibrary loan.

18 Q. And have you read it for this case?

19 A. I've reviewed it in the last five months.

20 No. 96, Smoking. Its Influence on
21 the Individual and Its Role in Social
22 Medicine, by C. Van Proosdy,
23 P-r-o-o-s-d-y.

24 Q. Did you read that for this case?

25 A. I've read substantial portions of this,

produced by RJRTTC

- 1 yes.
- 2 Q. Where did you get that?
- 3 A. I don't think this is in the University of
- 4 Houston Library, so it could have been in
- 5 the Rice University Library or the Texas
- 6 Medical Center Library.
- 7 Q. Okay.
- 8 A. No. 97, Tobacco & Your Health: The Smoking
- 9 Controversy, by Harold S. Diehl, 1969.
- 10 Q. Have you read it for this case?
- 11 A. I've reviewed it within the last five
- 12 months.
- 13 Q. Where did you get it?
- 14 A. From the -- I believe this is from the
- 15 University of Houston Library.
- 16 Q. Okay. Next?
- 17 A. Gordon L. Dillow, this is an article from
- 18 American Heritage. "The Hundred-Year War
- 19 Against the Cigarette," published in 1981.
- 20 Q. Did you read it for this case?
- 21 A. Yes.
- 22 Q. Where did you get that?
- 23 A. I don't know. I don't recall. I may have
- 24 gotten it out of the University of Houston
- 25 Library, except it says it's a reprint.

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MS. McDOLE: That was

No. 98.

A. No. 99, again from American Heritage.

"What Was It Like to be Sick in 1884," by
Charles E. Rosenberg, published in 1984.
I believe this was copied from the
University of Houston Library collection
of American Heritage.

Q. (BY MR. LEYH) Did you read it for this
case?

A. Yes. I did.

Q. Okay.

A. The article is --

MS. McDOLE: Number 100?

A. No. 100, thank you. John C. Burnham,
"American Physicians and Tobacco Use: Two
Surgeons General, 1929 and 1964."

Q. (BY MR. LEYH) Did you read that for this
case?

A. Yes. Published in 1989 in the Bulletin of
the History of Medicine.

Q. Is that significant that it's in the
Bulletin of the History of Medicine?

A. It's a publication.

This is the next one, No. 101;

1 Allan M. Brandt, "The Cigarette, Risk, and
2 American Culture," appeared in a journal
3 called Daedalus in 1990.

4 Q. Did you read that for this report?

5 A. Yes.

6 Q. Okay.

7 A. Next --

8 MS. McDOLE: No. 102?

9 A. No. 102, "Cigarette Century," John A.
10 Meyer. This appeared in American Heritage
11 December of 1992.

12 Q. (BY MR. LEYH) Did you read it for this
13 case?

14 A. Yes.

15 MS. McDOLE: Was that the end
16 of a box, or is that out of the
17 same box?

18 MR. LEYH: No, we're not at
19 the end of the box, yet.

20 (Martin Exhibit No. 103 was
21 marked for identification
22 purposes.)

23 Q. (BY MR. LEYH) I have put in a binder a
24 bunch of articles that I think belong
25 together and marked it as 103. Can you

1 tell me what's in it and if they go
2 together?

3 A. Yes, these are the medical-related
4 articles that appear in the bibliography
5 attached to my report.

6 Q. Did you read all of those for this report?

7 A. Yes.

(Martin Exhibit No. 104 was
marked for identification
purposes.)

8 Q. (BY MR. LEYH) What's Exhibit 104?

9 A. It contains the Kansas Report and the
10 Kansas State Adopted Textbooks Report
11 prepared by Richard K. Means, Emeritus
12 Professor and Director of Health
13 Education, Auburn University. October of
14 1995 is the date on it.

15 Q. Did you specifically request that material
16 for this case?

17 A. Yes.

18 Q. And you read it all?

19 A. Yes.

(Martin Exhibit No. 105 was
marked for identification
purposes.)

20

21

1 Q. (BY MR. LEYH) And what is Exhibit 105?

2 A. Exhibit 105 is a similar report prepared
3 for Indiana. It's called the Indiana
4 Report prepared in August of 1994 by
5 Richard K. Means. This was material that
6 was relevant to the Rogers case in
7 Indianapolis, Indiana.

8 Q. Does Means prepare this for litigation,
9 pull these materials together?

10 A. Yes, I believe so. Yes.

11 MS. McDOLE: Do you mean just
12 for litigation?

13 Q. (BY MR. LEYH) Have you talked to him?

14 MS. McDOLE: Objection to the
15 form.

16 A. Yes.

17 Q. (BY MR. LEYH) Have you asked him for
18 various documents and in various states in
19 terms of their education?

20 A. The two that I have been involved in.
21 I'll take that back; there was a third
22 one. It was Indiana, Kansas, and New
23 Jersey.

24 Q. And briefly, what is the nature of your
25 requests? What do you tell them you want?

1 A. I tell them I would like to have a report
2 having to do with laws bearing on public
3 education and textbook adoption for the
4 state in question.

5 Q. How did you come to find out about
6 Professor Means?

7 A. Well, through two sources, John Ettling,
8 my former Houston colleague told me and
9 talked to me about Professor Means and his
10 work, and I would say it would have been
11 in June of 1994 approximately, either Paul
12 Koethe and/or Steve Kaczynski also told me
13 about him.

14 Q. Okay. This page that is free floating, is
15 the page that was missing? You said at
16 one point there was a cover sheet that
17 looked like it was missing.

18 A. That possibly is the case.

19 Q. I don't want to mark it, but you can keep
20 it together with the other documents.

21 This, however, I will mark.

22 (Martin Exhibit No. 106 was
23 marked for identification
24 purposes.)

25 Q. (BY MR. LEYH) What's 106?

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1 A. 106 is a record of a telephone
2 conversation that I had with Shelley
3 Bookspan about papers, newspapers that
4 would perhaps be relevant to this case.
5 It's the best of my recollection, or I may
6 have had the telephone conversation with
7 Paul Koethe after I talked to Shelley
8 Bookspan, one or the other.

9 Q. Okay.

10 MS. McDOLE: Are we finished
11 with this box?

12 MR. LEYH: Yes.

13 MS. McDOLE: Okay. We are
14 missing that one exhibit.

15 MR. LEYH: No. 73?

16 MS. McDOLE: Yes. I couldn't
17 find it, if we did talk about it.

18 (Martin Exhibit No. 107 was
19 marked for identification
20 purposes.)

21 Q. (BY MR. LEYH) What is 107?

22 A. These are articles appearing in Reader's
23 Digest from, I believe, the first date is
24 1924 through October of 1963, including a
25 list that I asked Katie Harrison to

1 prepare for me of the articles and a
2 sample draft of references to heart
3 disease and smoking in some of the
4 articles that I also asked Katie Harrison
5 to prepare for me.

6 Q. Okay.

7 (Martin Exhibit No. 108 was
8 marked for identification
9 purposes.)

10 Q. (BY MR. LEYH) 108?

11 A. Life magazine articles from the 1950s
12 having to do with smoking and health
13 issues.

14 (Martin Exhibit No. 109 was
15 marked for identification
16 purposes.)

17 Q. (BY MR. LEYH) 109?

18 A. Articles from Ebony magazine, dated
19 1960-something, I believe 1962, and 1974
20 dealing with smoking.

21 (Martin Exhibit No. 110 was
22 marked for identification
23 purposes.)

24 Q. (BY MR. LEYH) What's 110?

25 A. Good Health Magazine from 1899 to 1929.

(Martin Exhibit No. 111 was marked for identification purposes.)

Q. (BY MR. LEYH) What's 111?

A. The summary that I asked Katie Harrison to prepare for me, references to tobacco related to the heart or blood circulation in Good Health Magazine.

(Martin Exhibit No. 112 was marked for identification purposes.)

Q. What's 112?

A. Good Health Magazine from 1942 to 1953.

Q. Did you personally look at all of these Good Health Magazine articles?

A. Yes.

(Martin Exhibit No. 113 was marked for identification purposes.)

Q. (BY MR. LEYH) What is 113?

A. Good Health Magazine, Volume II, January 1930 to May 1942.

THE WITNESS: I need to take that five-minute break.

MS. McDOLLE: Sure.

(A short recess was taken;
and Martin Exhibit No. 114 was
marked for identification
purposes.)

Q. (BY MR. LEYH) What's 114? It looks like
Newsweek articles, but you tell me.

A. Newsweek articles.

(Martin Exhibit No. 115 was
marked for identification
purposes.)

Q. (BY MR. LEYH) 115 looks like Time
articles; is that right?

A. That is correct, yes.

(Martin Exhibit No. 116 was
marked for identification
purposes.)

Q. (BY MR. LEYH) What I've marked 116 looks
like a big box of New York Times material
with a package of Indiana material; is
that right?

A. That is correct.

Q. Is there one file folder with
miscellaneous?

A. With miscellaneous newspapers, yes.

Q. Is there any rhyme or reason to that

1 particular file?

2 A. Well, these are materials relating either
3 to Lucy Page Gaston and the decision by
4 the Kansas Supreme Court and the Nossaman
5 case to sustain the anti-cigarette law in
6 Kansas. I think that's pretty much what's
7 in here.

8 Q. All right. Now, does anybody see any
9 other boxes or documents we haven't been
10 through? I think that covers it.

11 A. I'm not aware of any.

12 Q. What did you do, if anything, professor,
13 to prepare for this deposition?

14 A. I had initially a day and a half meeting,
15 and total of which in that day and a half
16 period of about eight hours perhaps, back
17 in late January at a time when I think the
18 deposition was originally scheduled for
19 some time around the first of February.

20 I had follow-up meetings as I
21 remember on two occasions, and then two
22 days ago, I came to this hotel and met
23 during the morning hours with Sidney
24 McDole and J. C. McElveen. Yesterday, I
25 was here and met with Steve Kaczynski and

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Hempire

- 1 an attorney by the name of Cathy Bjorck.
2 That brings us to today.
3 Q. That's a lot of meetings?
4 A. Yes.
5 Q. First one was over a two-day period,
6 approximately eight hours?
7 A. Approximately eight hours, yes.
8 Q. Who was at that meeting?
9 A. Steve Kaczynski and I believe Tom Pavlik,
10 P-a-v-l-i-k. He was with the firm.
11 Q. Jones, Day firm?
12 A. Jones, Day, yes.
13 Q. Where was the meeting held?
14 A. At the -- well, it was in the Galleria
15 area. Right now the name of the hotel
16 escapes me. I'll remember it in two
17 minutes.
18 Q. Here in Houston?
19 A. Yes, here in Houston.
20 Q. Well, tell me what they told you about the
21 deposition.
22 A. Well, they explained the process to me.
23 And I raised a series of questions with
24 them trying to understand that process,
25 and that's what we talked about.

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in
Hempden

- 1 Q. What did they say about the process?
- 2 A. They told me that I should make an honest
- 3 attempt to answer the questions; and above
- 4 all else, I should make every effort, as
- 5 it was my sworn duty, to tell the truth.
- 6 Q. What else did they tell you about the
- 7 process?
- 8 A. They told me that there would be a record
- 9 taken at the deposition, that sort of
- 10 thing.
- 11 Q. Did they tell you anything about what they
- 12 anticipated the questions might be?
- 13 A. They asked me a whole series of questions,
- 14 yes.
- 15 Q. What kinds of questions did they ask you?
- 16 A. They asked me questions ranging from my
- 17 personal views on smoking to content
- 18 questions with respect to the documents
- 19 that I had reviewed.
- 20 Q. Did they, in effect, give you a mock
- 21 cross-examination?
- 22 A. Well, they asked questions, but I don't
- 23 know whether they call that a mock
- 24 cross-examination or not.
- 25 Q. Did you talk with them about what answers

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1 you gave to the questions they asked?

2 A. Yes.

3 Q. Did they make suggestions in terms of what
4 answers were appropriate?

5 A. I would say that it was more, why did you
6 decide to answer that question or this
7 question in that particular manner.

8 Q. Did they ask you to think about other
9 possible information that might be
10 provided in answer to a question that you
11 hadn't initially provided?

12 A. In relation to my report?

13 Q. In relation to any question they asked
14 you.

15 A. Not to the best of my recollection.

16 Q. Are you a smoker?

17 A. Yes.

18 Q. How long have you been a smoker?

19 A. Well, on and off since I was in college.

20 Q. How much do you smoke?

21 A. At this time, about a pack a day.

22 Q. What brand of cigarette do you smoke?

23 A. Kent Ultra Lights.

24 Q. Why do you smoke the ultra lights?

25 A. Because I like them.

1 Q. For health reasons?

2 A. Well, I've never, ever, smoked a strong
3 cigarette. And since I'm very good at
4 quitting for up to seven years or more on
5 certain occasions, I've never wanted to
6 smoke a cigarette that was strong in
7 nicotine; and Kent is very low in
8 nicotine.

9 Q. How many times have you quit?

10 A. At least three that I can remember.

11 Q. Did Mr. Kaczynski or Mr. Pavlik in this
12 first meeting that you had talk to you
13 about any legal theories in the case?

14 A. Legal theories in reference to what? I
15 don't --

16 Q. In reference to what was important from a
17 legal point of view with respect to the
18 case?

19 A. I think that's difficult for me to answer
20 since I'm not sure what you mean by "legal
21 theories."

22 Q. Let me ask it this way: Did they tell you
23 that one subject or another was important
24 to the lawyers?

25 A. No.

1 Q. Did they talk to you about common
2 knowledge relating to cigarette smoking
3 and the hazards?

4 A. Well, they didn't at these meetings
5 because I raised that issue months ago.

6 Q. And how did you raise that issue?

7 A. I raised that issue because of my own
8 awareness of what to the best of my
9 understanding has been ruled in alcohol
10 cases, especially in a Texas State Supreme
11 Court case against -- a case of local
12 citizens against one of the major
13 manufacturers, I believe it was Seagram's.

14 Q. Is that the McGuire case?

15 A. I don't know. All I can tell you was that
16 Drinking in America was cited as a source
17 in that particular case.

18 Q. Did you make any notes at this meeting?

19 A. At that meeting, no.

20 Q. Did you make any notes when you got back?

21 A. No.

22 Q. Did you review any documents at that
23 meeting?

24 A. No.

25 Q. Did you review any documents in

1 preparation for that meeting?

2 A. No.

3 Q. When was the next occasion you had to meet
4 with someone to prepare for your
5 deposition?

6 A. I think -- and I can only give you
7 approximate dates. It was about two weeks
8 after that time, so I would guess it was
9 probably around February 7th.

10 Q. And with whom did you meet at that time?

11 A. I met with Paul Koethe, and I believe Tom
12 Pavlik was at that meeting.

13 Q. Where was that meeting?

14 A. ~~There~~ at the Marriott Hotel.

15 Q. How long did you meet with them?

16 A. Somewhere between two and three hours.

17 Q. What did you discuss?

18 A. I would say I don't remember anything at
19 this point in particular, but we reviewed
20 some of the -- we went over some of the
21 questions that they had asked me at the
22 first meeting. We went over them at the
23 second meeting.

24 Q. Whose idea was the second meeting?

25 A. I can't say for sure, but presumably Paul

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1 Koethe would have had something to do with
2 it.

3 Q. Did you have a desire to have an
4 additional prep session?

5 A. No.

6 Q. Okay. Did you see any documents at that
7 second meeting?

8 A. No.

9 Q. Was there a third meeting two days ago
10 with Ms. McDole?

11 A. Yes.

12 Q. Was that, in fact, the third meeting?

13 A. Yes, I think that's correct.

14 Q. Okay. And tell me where you met.

15 A. Here at the Marriott.

16 Q. How long did you meet?

17 A. I would say for approximately three hours.

18 Q. Tell me what Ms. McDole told you.

19 A. Well, she again spoke with me about the
20 process. And she also showed me the
21 document, and we reviewed the document
22 which stated what materials I needed to
23 bring.

24 Q. What document was that; do you know?

25 MS. MCDOLE: It's the Notice

1 of Deposition.

2 A. Notice of Deposition.

3 Q. (BY MR. LEYH) Okay.

4 A. That was the first time I had seen that
5 particular page.

6 Q. That's when she told you not to bring your
7 statement, your invoice for time?

8 A. I can't remember whether that was then or
9 some other conversation.

10 Q. Okay. What else did she say about the
11 deposition?

12 A. Well, she and Mr. McElveen asked me
13 questions again.

14 Q. What questions did they ask you?

15 A. Well, I would say everything from my
16 attitudes toward smoking, my own personal
17 attitudes towards smoking to --

18 MS. McDOLLE: Jim?

19 Q. (BY MR. LEYH) Your attitudes towards
20 smoking?

21 A. My personal attitudes toward smoking --

22 Q. Okay.

23 A. -- to questions about the materials that I
24 had gone through.

25 Q. Tell me what questions they asked you

produced by R.J.R.T.C.
in

- 1 about the materials you had gone through.
- 2 A. As I remember, we had talked about the
- 3 various kinds of materials and documents
- 4 that I had been through, and what I
- 5 thought was consequential and significant
- 6 about those documents.
- 7 Q. Can you recall a single question that they
- 8 asked you?
- 9 A. Yes. What was my attitude -- what was my
- 10 personal attitude toward smoking.
- 11 Q. What was your answer to that question?
- 12 A. My personal attitude is that it can be
- 13 difficult to quit smoking and that
- 14 individuals have to weigh the risks, the
- 15 possible health risks, if they decide to
- 16 smoke.
- 17 Q. Okay. Did you tell them anything more
- 18 than what you just told me about your
- 19 answer?
- 20 A. I don't recall that I did.
- 21 Q. Do you recall any other specific questions
- 22 they asked you?
- 23 A. No.
- 24 Q. Did they tell you -- has any lawyer for
- 25 the defendants in this case told you about

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1 other deposition testimony, other expert
2 deposition testimony in this case?

3 A. No.

4 Q. Did they ask you any questions at any of
5 these meetings about advertisements?

6 A. Yes.

7 Q. What questions did they ask about
8 advertisements?

9 A. They asked me whether I had read
10 advertisements.

11 Q. And you said "no"?

12 A. I said "no."

13 Q. Did they follow that up?

14 A. Well, they asked me why I hadn't read
15 advertisements.

16 Q. And you said you thought it wasn't
17 significant to your assignment?

18 A. That's correct.

19 Q. Did they follow that up?

20 A. I'm not really sure that they did.

21 Q. Did they ask you questions about tobacco
22 company internal documents?

23 A. I don't recall that they did. They may
24 well have asked at some point had I ever
25 seen any tobacco company documents. I'm

1 sure I answered based on the original
2 principle to tell the truth that I had not
3 seen any internal tobacco company
4 documents.

5 Q. Did they ask you if you wanted to see
6 some?

7 A. No.

8 Q. Do you recall anything else about this
9 meeting you had with J. C. and Ms. McDole?

10 A. Not really.

11 Q. And your meeting yesterday was with
12 Mr. Kaczynski?

13 A. That's correct.

14 Q. How long did you meet with him?

15 A. Well, the day began by -- I had to link up
16 with my research assistant, and then we
17 hauled the documents out here. And we
18 went through the documents very carefully
19 according to the statement --

20 MS. MCDOLE: Notice of
21 Deposition.

22 A. I can't remember the name of it. Notice
23 of Deposition to make sure and
24 double-check that I had brought everything
25 that I had or thought might in some way be

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in
HUMANITIES

- 1 relevant to the case.
- 2 Q. Did you do anything else at the meeting
- 3 other than make sure you had all the
- 4 documents requested?
- 5 A. We talked about issues again, yes, with
- 6 respect to my opinions.
- 7 Q. Which issues did you talk about yesterday?
- 8 A. Well, as I remember, we did some general
- 9 weighting of categories of information.
- 10 That was one activity that I remember.
- 11 Q. How did that activity go?
- 12 A. Well, it's a matter of -- I think we had a
- 13 fairly similar discussion. What documents
- 14 may have been most significant at
- 15 particular points of time. We also had a
- 16 discussion about historical context and
- 17 understanding documents in context and
- 18 keeping those documents in context.
- 19 Q. Is it your opinion that the best way to
- 20 understand a historical document is to
- 21 situate it in its own historical context?
- 22 A. If you don't do that, then you're making
- 23 it up.
- 24 Q. Right. Did you talk yesterday about
- 25 whether or not it was common knowledge in

52005 2132

1 the Fifties that cigarettes caused
2 disease?

3 A. The phrase "common knowledge" did not come
4 up yesterday.

5 Q. Public awareness?

6 A. Yes, we certainly talked about public
7 awareness.

8 Q. Do you understand there to be any
9 difference between those two phrases
10 "common knowledge" and "public
11 awareness"?

12 A. Well, public awareness is complete or
13 overwhelming, and I think one could
14 conclude that common knowledge is present.

15 Q. Do you recall anything else that you
16 discussed yesterday at the meeting?

17 A. Yes, we talked about why certain documents
18 at certain times were more important than
19 other documents at other times; for
20 instance, the United States did not become
21 a fully urban nation by census reports
22 until the 1920s, so that when individuals
23 were writing pamphlets in the nineteenth
24 century, they were a far more important
25 source of information than they would be

1 in an industrializing, urbanizing, and
2 communications-oriented society in the
3 twentieth century.

4 I remember talking specifically
5 about the Livermore pamphlet and how
6 individuals like Livermore would go out
7 traveling from community to community to
8 community in rural areas and that this
9 would be a major event as a way of
10 communicating information and learning
11 about issues, that sort of thing. And
12 that goes back to why pamphlets perhaps
13 were so important in the nineteenth
14 century as compared to today when we have
15 instant communication. We can turn on a
16 television, radio, whatever it might be,
17 to get the same kinds of information.

18 Q. In any of the discussions you had with the
19 defense lawyers that related to the
20 weighting or ranking of the categories of
21 documents, did any of those discussions
22 include where tobacco advertisements might
23 fit had you included them?

24 A. No.

25 Q. Have you had at various times telephone

1 conversations with anybody to prepare for
2 this deposition?

3 A. Well, I've had calls saying would you be
4 available at a certain point in time; but
5 we didn't have any specific discussions
6 that I can recall at this time beyond,
7 well, where would you like to meet, and
8 this is the time that I would be available
9 given other activities and
10 responsibilities in my schedule.

11 Q. Did you do anything to prepare for this
12 deposition other than what you've already
13 described?

14 A. No.

15 Q. Okay. I want to go back to Exhibit 5 a
16 moment with you.

17 A. Okay.

18 Q. First page of which says "Case File, David
19 Burton."

20 A. That's correct.

21 Q. Did you prepare the information on that
22 page?

23 A. Yes, I did.

24 Q. Okay. And did you prepare it on the basis
25 of documents you were provided or in a

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in
COMPILEX

- 1 conversation with somebody? How did that
2 go?
- 3 A. That document, I must have put on my
4 computer the same day, I'm going by the
5 date, that Steve Kaczynski called me about
6 this particular case.
- 7 Q. I think if we look here, there's an
8 8/11/95 note somewhere here?
- 9 A. I think that's correct.
- 10 Q. So you and he were talking, then either
11 after the conversation or during, you
12 prepared this?
- 13 A. That's right.
- 14 Q. So this is based on what Steve Kaczynski
15 told you?
- 16 A. Yes.
- 17 Q. Okay. Second page is called "David Burton
18 Case -- Research Items."
- 19 A. Yes.
- 20 Q. Describe the circumstances you prepared
21 that document, if you did in fact prepare
22 it.
- 23 A. This document would have been prepared
24 after the meeting in Dallas, which I think
25 I described earlier. It was late in

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1 August, but approximately the 24th of
2 August or 25th of August. I think there
3 are notes about that meeting, too, about
4 the kinds of research that we discussed.

5 Q. Is that the page of notes?

6 A. Yes, that's correct.

7 Q. So what you in effect did with both of
8 these first two pages of Exhibit 5, you
9 took written notes, then you transferred
10 them into the computer system?

11 A. That's correct, just as a form of trying
12 to stay on top of information.

13 Q. All right. Now, with regard to the
14 handwritten notes you prepared dated
15 8/11/95 --

16 A. Uh-huh.

17 Q. -- it looks to me like it says
18 "March-August 1995 -- little
19 preparation"; is that what that says?

20 A. Yes, I guess that is what it says.

21 Q. Do you know what that means?

22 A. In this context, I don't really recall.

23 Q. Do you have an idea whether that would be
24 something Steve may have told you or
25 something you jotted down independently of

1 what he told you?

2 A. I can't tell you at this particular point
3 what I meant by that particular notation.

4 Q. Okay. And it says "April 2, 1996" --
5 something. What is that word?

6 A. "Prepped."

7 Q. What does that mean?

8 A. I presume it means that one would have to
9 be prepared to file a report by October 2,
10 1995. "Prepped" would be referring to
11 prepared.

12 Q. Okay. It says, "expect case to go to
13 trial"; is that right?

14 A. That's what I wrote.

15 Q. Is that what he told you?

16 A. I guess that's what he must have said.

17 Q. Do you recall what else he said in
18 connection with the comment that he
19 expects the case to go to trial?

20 A. No.

21 Q. Is that -- what does the next line say?

22 A. That my principal contact would be Paul
Koethe.

24 Q. What are the first two words in this line?

25 A. "Work prin."

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in
HUNTER

- 1 Q. Okay. These are the issues that
2 Mr. Kaczynski identified for you that
3 you've indicated "1)" and "2)"?
4 A. Yes.
5 Q. He told you all the information contained
6 in this handwritten --
7 A. I asked him for information.
8 Q. And he reported back, and you wrote it
9 down?
10 A. Well, that was part of the telephone
11 conversation; tell me about the case; tell
12 me about what's going on.
13 Q. What is the word down here in front of
14 "track," looks like nuclear?
15 A. "Unclear."
16 Q. It says "unclear"?
17 A. "Unclear."
18 Q. Unclear what; track?
19 A. "Unclear track 55-60." I think what Steve
20 was saying to me, he wasn't quite sure
21 where David Burton had lived, but this was
22 a recollection that he had.
23 Q. And did he mention to you Rick Means?
24 A. Rick Means, we talked about him in common
25 because I had worked with Richard Means on

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- 1 the Indiana case.
- 2 Q. Flipping to the second page, it is
- 3 apparently your note from the August 25
- 4 meeting; correct?
- 5 A. Yes.
- 6 Q. And you've got "Meeting Dallas, J,D,R,P."
- 7 What does that all mean?
- 8 A. Jones, Day, Reavis & Pogue.
- 9 Q. Who was at this meeting?
- 10 A. Sidney McDole and Steve Kaczynski.
- 11 Q. Okay. And you've got here, "two distinct
- 12 projects pre-1950 and 1950 forward." Who
- 13 drew the distinction there between those
- 14 two projects, them or you?
- 15 A. I don't really recall at this particular
- 16 point because there weren't two distinct
- 17 projects pre- and post-1950.
- 18 Q. You don't know? In other words -- go
- 19 ahead.
- 20 A. That may have been a suggestion that I
- 21 made, but there were not two distinct pre-
- 22 and post-1950 projects.
- 23 Q. It says "did read Time." Is that there
- 24 because they told you David Burton read
- 25 Time?

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1 A. Yes.

2 Q. Why is "biography Henry Luce" there?

3 A. Henry Luce was the long-time editor of
4 Time magazine. And I think I must have
5 considered the possibility or suggested,
6 well, maybe it would be worth learning
7 something about Henry Luce, and that was
8 not pursued.

9 Q. "Katie to Cleveland," is that a reference
10 to sending her to Jones, Day --

11 A. Yes.

12 Q. To look at documents?

13 A. Well, they said they have quite a
14 collection of documents, and I said, well,
15 I'll talk to her about this case and send
16 her up and see if she can find anything.

17 Q. Did they suggest that somebody from your
18 office, as it were, go to Cleveland to
19 look at documents?

20 MS. McDOLLE: Did we suggest
21 it?

22 MR. LEYH: Yes.

23 Q. (BY MR. LEYH) Did the lawyers suggest it?

24 A. Actually, I don't think that would have
25 been true in this particular case because

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in
HUMPHREY

1 I had sent a person, I think I mentioned
2 before, Diana Dean to Cleveland for the
3 Rogers case.

4 Q. Did Katie, in fact, go to Cleveland for
5 this case?

6 A. Yes.

7 Q. Okay. Did they tell you what kind of
8 documents they had in Cleveland?

9 MS. McDOLLE: I'm sorry. Did
10 we tell him in Dallas, or are you
11 saying when somebody went to
12 Cleveland, did somebody tell that
13 person?

14 Q. (BY MR. LEYH) I mean at this meeting of
15 August 25.

16 A. No. I still really don't know specifically
17 what kinds -- I don't know the extent of
18 the collection. I've never seen it.

19 Q. Down here it looks like you've written
20 "athletic angle -- did message get
21 through." Can you explain what that
22 means?

23 A. I am sure I asked because of general
24 familiarity, did David Burton participate
25 in athletics. I think it was a very

1 natural thing for a person in my own
2 position to ask because I had participated
3 extensively in athletics in high school
4 and into college; and I can remember more
5 than one coach admonishing us not to smoke
6 because we would be thrown off the team
7 for breaking rules and because of the
8 adverse effect it would have on our
9 stamina.

10 Q. When were you in high school?

11 A. 1957 to 1961.

12 Q. Now, beneath that you've got "Ebony and
13 get possible" --

14 A. "Black paper in Kansas City."

15 Q. Okay.

16 A. I was asking whether there was a separate
17 black newspaper that was published in the
18 region. There is, indeed, a separate
19 black newspaper published in Houston, and
20 I wondered if there was a source of
21 information, and to the best of my
22 knowledge, I don't know whether -- we
23 couldn't find anything about a possible
24 separate publication specifically for the
25 black community.

1 Q. Did they suggest to you, they being the
2 lawyers at this meeting, that Mr. Burton
3 read a black newspaper?

4 A. No, that's my question.

5 Q. Okay.

6 A. That's why I've got the notation "local
7 black paper."

8 Q. Here's a copy of a letter that you
9 apparently sent to Professor Means dated
10 November 4, 1995.

11 A. Yes.

12 Q. It says thank you "for sending me a copy
13 of your letter to Allen Purvis"?

14 A. Yes.

15 Q. Is that letter in your file?

16 A. I don't know where that letter is, quite
17 honestly.

18 Q. Do you recall what the contents of the
19 letter were?

20 A. I called Dick because when I read the
21 Kansas Course of Study for 1932, of which
22 there is a separate copy in one of the
23 boxes, that I thought that was a very
24 significant document, and he had not
25 reproduced it completely. And I said is

1 there any way to get me a copy of that
2 particular document, the Kansas Course of
3 Study dated 1932?

4 And he said he would see if there
5 would be some fast way to get it, that he
6 had no plans to go back to Kansas in his
7 immediate future. So I think that he
8 called up Allen Purvis, whom I met in 1986
9 as I recall or maybe it was later as an
10 attorney in the Kansas City area, and
11 asked Allen if he might find some way to
12 get a copy of that document. I think
13 that's what that is in reference to.

14 Have you talked to Allen Purvis since that
15 initial meeting in '86?

16 A. I talked to him once on the phone in 1994,
17 and I honestly can't remember what it was
18 about. I think it was during the summer
19 of 1994, and it may have been in reference
20 to something having to do with the Rogers
21 case. That was the last time that I
22 talked to him.

23 Q. Do you recall if he called you or you
24 called him?

25 A. I really can't remember at this point.

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in
Hempire

- 1 Q. You've got a document here dated
2 November 16 saying "Draft -- Summary
3 Agenda." Can you tell me if you prepared
4 it?
- 5 A. No, Katie Harrison prepared it.
- 6 Q. Was that document prepared before the
7 meeting?
- 8 A. No.
- 9 Q. After the meeting?
- 10 A. After the meeting.
- 11 Q. Was it a document --
- 12 A. I simply asked her to prepare reminders of
13 things that I might want to look into.
- 14 Q. All right. I've got a document dated --
15 It says "Re: Notes December 19, 1995
16 meeting," looks like to you from Harrison;
17 is that right?
- 18 A. Yes.
- 19 Q. Would you describe it?
- 20 A. I think these were various things that we
21 talked about after I had done an initial
22 draft of the report. I can give you some
23 examples, consumption figures for the
24 1950s. Paul Koethe asked me whether my
25 figures were correct, and I wrote -- or

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1 Katie jotted down for me to remind me to
2 double-check them. Those figures, for
3 example, I did double-check, and I
4 included a copy of the consumption figures
5 in the materials that I brought today.

6 These are reminders, like I forgot
7 to include Life magazine at one point. I
8 didn't have a sentence, as I remember
9 saying that health courses were required
10 in high school. I just assumed it, so the
11 suggestion was made that I add a sentence
12 saying yes, or a phrase that public health
13 courses were also required in Kansas high
14 schools.

15 Q. Whose suggestion was that?

16 A. I think that was Paul Koethe's.

17 Q. You've got a page of handwritten notes
18 dated "12/12/95, Paul Koethe." This is
19 from a meeting with him?

20 A. No.

21 Q. Telephone conversation?

22 A. I would say it must have been a telephone
23 conversation.

24 Q. You've got "Burton deposition -- out
25 there, general awareness." What does that

1 mean?

2 A. Well, we must have been talking about --

3 MS. McDOLE: Don't speculate;
4 say what you remember.

5 A. I don't know.

6 Q. (BY MR. LEYH) What do you think?

7 A. I write things down when I'm talking on
8 the phone.

9 Q. What do you think it refers to, professor?

10 A. General awareness.

11 Q. What does that mean; general awareness of
12 what, whose?

13 A. Public awareness with respect to the
14 issues that I was asked to look into.

15 Q. What's "out there" to refer to?

16 A. "Out there"?

17 Q. Is that what it says?

18 A. I have no idea what "out there" refers to.

19 Q. What does the next line say?

20 A. "I was aware, too." Was he aware, too?

21 I'm sure that I said that I couldn't
22 answer that question.

23 Q. And the line beneath that says what?

24 A. "Advertising (drowned out)." Did
25 advertising drown out the message?

1 Q. Was that something --

2 A. I didn't investigate that question.

3 Q. Did he ask you about that question?

4 A. I really don't know.

5 Q. Now, bottom part of this page, did you
6 write that during or shortly after this
7 conversation, or did you write it in some
8 other setting?

9 A. Well, I just have a tablet on my desk. It
10 looks like "13 December 1995" I thought it
11 would be appropriate to review the
12 deposition that we have discussed, David
13 Burton's deposition that we have discussed
14 previously, and that's what I did. And I
15 just noted certain items there.

16 Q. All right.

17 A. That I thought were of interest that I
18 wanted to keep in the back of my mind.

19 Q. You've noted that he had two wives; is
20 that right?

21 A. Yes.

22 Q. Is that significant to your opinion for
some reason?

24 A. No.

25 Q. Why did you note it?

1 A. I have no idea.

2 Q. Do you know why you wanted -- is it
3 something you thought at the time you
4 wanted to keep in the back of your mind?

5 A. Yes, I must have.

6 Q. What about his arrests that you've noted?
7 Is that relevant to your opinion in this
8 case?

9 A. No.

10 Q. Do you know why you wrote that down?

11 A. Well, when one goes through and one is
12 trying -- he describes his life. That's,
13 I think, what I was trying to do was to
14 get a sense of his life, and I think all
15 of those notations relate to that
16 process. I would do that if I was trying
17 to understand anything.

18 Q. And you indicate here that you've written
19 "Camels are good for you."

20 A. Right.

21 Q. That refers to Mr. Burton's testimony?

22 A. I believe so, yes. That's even the page
23 number in which he made that comment.

24 Q. Do you believe that comment was made with
25 regard to advertising about Camels?

1 A. I can't tell you because we would have to
2 look it up in the deposition at this point
3 in time.

4 Q. Okay. Now, there's a note dated 1/3/96.
5 Is that from a meeting with somebody?

6 A. Yes.

7 Q. Paul Koethe?

8 A. Telephone conversation with Paul Koethe
9 saying we would meet here at the airport
10 to look over my report one more time.

11 Q. All right. Did he make suggestions for
12 changes at that meeting?

13 A. At the meeting on the 5th?

14 Q. Yes.

15 A. Yes.

16 Q. How about in the conversation?

17 A. I think we had a discussion about a
18 comment at one point.

19 Q. How about in the conversation, did he
20 suggest changes?

21 A. No.

22 Q. In the telephone conversation dated 1/3?

23 A. No.

24 Q. Now, you say here, "In forming my
25 opinions, I have reviewed a wide

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in
Hempfield

- 1 assortment of historical materials
2 including..., " and then you list some.
3 Why did you write that down?
4 A. Because at this point, it was unclear
5 whether I was going to prepare a narrative
6 bibliography or a full item-by-item
7 bibliography. And I was not getting clear
8 directions on that, and Paul and I
9 talked. If I was going to prepare a
10 narrative bibliography, what would be the
11 appropriate way for me to state it, and I
12 think those words appear in my report,
13 something to that effect at the beginning,
14 what is the source material in the
15 narrative bibliography.
16 Q. Did he suggest any of those words?
17 A. Well, we talked about them together
18 because I had never prepared a report like
19 this in my life, and I didn't know what
20 the right thing to do was.
21 Q. Did the two of you talk about what you've
22 marked as part "B." here, the sentence
23 that reads, "My opinions are also based on
24 my education and experience as a
25 historian." I don't know what the rest of

1 that says, do you?

2 A. Right. I remember at that time we were
3 talking about would I need to include some
4 sort of a statement about my
5 qualifications, my background, training,
6 academic training, that sort of thing.
7 The suggestion, if I remember correctly,
8 was why don't you go ahead and include a
9 vita, which I believe was included with
10 the final statement, that you ought to put
11 a statement in there to the effect that I
12 have background and training in history.

13 Q. Then Item "C," is that also a subject that
14 the two of you discussed?

15 A. Yes.

16 Q. Would you read that into the record?

17 A. "Short reference to Burton, perhaps. This
18 information was available in the cases
19 where D. Burton resided. Nothing should
20 have prevented him from having access to
21 this information."

22 Q. Is that what Mr. Koethe told you?

23 A. No, we talked about that. I said that I
24 was concerned that this report wasn't
25 grounded in any way. So we talked about

1 should a statement appear, and I believe
2 that in the end, I decided to include a
3 version of the first statement there. I
4 believe that does appear on the report.

5 MR. LEYH: No more
6 questions. Do you have any
7 questions, counsel?

8 MS. McDOLLE: No.
9 (Deposition concluded.)
10
11
12

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25

JAMES KIRBY MARTIN, Ph.D.

THE STATE OF TEXAS)

SUBSCRIBED AND SWORN TO BEFORE ME, the
undersigned authority, by the said JAMES KIRBY
MARTIN, Ph.D., on this the _____ day of
_____, 1996.

Notary Public in and for
the State of Texas

My Commission Expires: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DAVID AND ORA BURTON,)

Plaintiffs,)

VS.)

CASE NO. 94-2202-JWL

R.J. REYNOLDS TOBACCO CO.,)

and)

THE AMERICAN TOBACCO CO.,)

Defendants.)

I, DONNA J. HOWSON, Certified Shorthand
Reporter in and for the State of Texas, hereby
certify pursuant to the Rules and/or agreement of
the parties present to the following:

That this deposition transcript of JAMES
KIRBY MARTIN, Ph.D., deposed on February 23, 1996,
is a true record of the testimony given by the
witness named herein, after said witness was duly
sworn by me.

Given under my hand and seal of office on
this the 6th day of March, 1996.

Donna J. Howson

DONNA J. HOWSON, CSR
Certificate No. 6037
Date of Expiration: 12-31-97
United Reporting, Inc.
7407 Old Katy Road
Houston, Texas 77024
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DAVID AND ORA BURTON,)

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CASE NO. 94-2202-JWL

R.J. REYNOLDS TOBACCO CO.,)

and)

THE AMERICAN TOBACCO CO.,)

Defendants.)

DEPOSITION OF JAMES KIRBY MARTIN, Ph.D.

February 23, 1996

18700 John F. Kennedy Boulevard

Houston, Texas

DONNA J. HOWSON, CSR

United Reporting, Inc.

7407 Old Katy Road

Houston, Texas 77024

Job No. 32291

1 I, DONNA J. HOWSON, Certified Shorthand
2 Reporter in and for the State of Texas, being
3 neither attorney for, related to, nor employed by
4 any of the parties or any attorneys of record in
5 this cause and having no financial interest in the
6 matter, hereby certify pursuant to the Federal
7 Rules of Civil Procedure and/or agreement of the
8 parties present to the following:

9 That the witness was duly sworn by me;
10 That the transcript is a true record of the
11 testimony given by the witness;

12 That the original deposition transcript
13 signature page was submitted to the witness or to
14 the attorney of record for the witness for
15 examination and return to United Reporting within
16 30 days, on _____, 1996;

17 That changes, if any, made by the witness in
18 the transcript and otherwise are attached hereto or
19 incorporated herein;

20 That the original deposition
21 transcript/signature page was/was not returned to
22 the officer by the witness.

23 That the original deposition transcript, or
24 a copy thereof in the event the original was not
25 returned to me, together with copies of all

1 exhibits, was delivered for safekeeping and use at
2 trial and hearings, to Mr. Gregory Leyh, on
3 _____, 1996;

4 That pursuant to the Federal Rules of Civil
5 Procedure 30(f), a copy of this certificate was
6 served on all parties made known to me at the time
7 said testimony was taken, to wit:

8
9 Mr. Gregory Leyh
10 Humphrey, Farrington & McClain
11 221 West Lexington, Suite 400
12 Independence, Missouri 64050

Counsel for Plaintiffs

13
14 Ms. Sydney Bosworth McDole
15 and
16 Mr. William E. Marple
17 Jones, Day, Reavis & Pogue
18 2300 Trammel Crow Center
19 2001 Ross Avenue
20 Dallas, Texas 75201

Counsel for Defendant
R. J. Reynolds Tobacco Company

21
22 Mr. Stephen J. Kaczynski
23 Jones, Day, Reavis & Pogue
24 901 Lakeside Avenue
25 Cleveland, Ohio 44114

Counsel For Defendant
R. J. Reynolds Tobacco Company

Expert

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4/24/96
STK
J. email

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DAVID AND ORA BURTON,

Plaintiffs,

VS.

R.J. REYNOLDS TOBACCO CO.,

and

THE AMERICAN TOBACCO CO.,

Defendants.

CASE NO. 94-2202-JWL

DEPOSITION OF JAMES KIRBY MARTIN, Ph.D.

February 23, 1996

18700 John F. Kennedy Boulevard

Houston, Texas

DONNA J. HOWSON, CSR

United Reporting, Inc.

7407 Old Katy Road

Houston, Texas 77024

Job No. 32291

UNITED REPORTING, INC. (713) 681-9800

52005 2159

1 I, DONNA J. HOWSON, Certified Shorthand
2 Reporter in and for the State of Texas, being
3 neither attorney for, related to, nor employed by
4 any of the parties or any attorneys of record in
5 this cause and having no financial interest in the
6 matter, hereby certify pursuant to the Federal
7 Rules of Civil Procedure and/or agreement of the
8 parties present to the following:

9 That the witness was duly sworn by me;

10 That the transcript is a true record of the
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13 signature page was submitted to the witness or to
14 the attorney of record for the witness for
15 examination and return to United Reporting within
16 30 days on _____, 1996;

17 That changes, if any, made by the witness in
18 the transcript and otherwise are attached hereto or
19 incorporated herein;

20 That the original deposition
21 transcript/^{205 ltr}signature page was/~~was not~~ returned to
22 the officer by the witness.

23 That the original deposition transcript, or
24 a copy thereof in the event the original was not
25 returned to me, together with copies of all

390

1 exhibits, was delivered for safekeeping and use at
2 trial and hearings, to Mr. Gregory Leyh, on
3 4.4, 1996;

4 That pursuant to the Federal Rules of Civil
5 Procedure 30(f), a copy of this certificate was
6 served on all parties made known to me at the time
7 said testimony was taken, to wit:

8
9 Mr. Gregory Leyh
10 Humphrey, Farrington & McClain
11 221 West Lexington, Suite 400
12 Independence, Missouri 64050

Counsel for Plaintiffs

13 Ms. Sydney Bosworth McDole
14 and
15 Mr. William E. Marple
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19 Dallas, Texas 75201

Counsel for Defendant
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1 Mr. M. Warren McCamish
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3 784 Ann Avenue
4 Kansas City, Kansas 66101

5 Counsel for Defendant
6 R. J. Reynolds Tobacco Company

7 Mr. James Mirro
8 and
9 Mr. Bruce G. Scheffler
10 Chadbourne & Parke
11 30 Rockefeller Plaza
12 New York, New York 10112

13 Counsel for Defendant
14 The American Tobacco Company

15 Mr. James D. Griffin
16 Blackwell, Sanders, Matheny,
17 Weary & Lombardi
18 40 Corporate Woods, Suite 1200
19 9401 Indian Creek Parkway
20 Overland Park, Kansas 66210

21 Counsel for Defendant
22 The American Tobacco Company

23 SUBSCRIBED AND SWORN TO by the undersigned
24 on this the 25th day of March
25 1996.

Donna J. Howson

26 DONNA J. HOWSON, CSR
27 Certificate No. 6037
28 Date of Expiration: 12-31-97
29 United Reporting, Inc.
30 7407 Old Katy Road
31 Houston, Texas 77024
32 (713) 681-9800

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1 should a statement appear, and I believe
2 that in the end, I decided to include a
3 version of the first statement there. I
4 believe that does appear on the report.

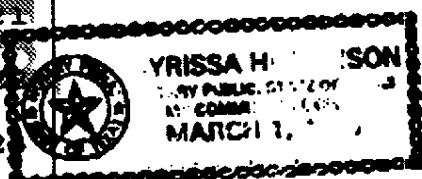
5 MR. LEYH: No more
6 questions. Do you have any
7 questions, counsel?

8 MS. MCDOLE: No.
9 (Deposition concluded.)
10
11

12 
13 JAMES KIRBY MARTIN, Ph.D.
14
15

16 THE STATE OF TEXAS)
17

18 SUBSCRIBED AND SWORN TO BEFORE ME, the
19 undersigned authority, by the said JAMES KIRBY
20 MARTIN, Ph.D., on this the 21st day of
21 March, 1996.
22



24 
25 Notary Public in and for
the State of Texas

My Commission Expires: 3.1.97

CORRECTIONS BY THE WITNESS

Page	Line	From	To	Reason for Change
17	13	individuals	individual	} s in wrong place
"	"	right	rights	
24	15	minds they...	to minds they	no break in sentence
28	2	opposite that...	to opposite, that	needs comma
28	2	delete a		not needed
35	20	perhaps, resolved ...	to	} place comma correct place
		perhaps resolved,		
113	24	level status ...	to level status	needs comma
139	11	made aware <u>to</u> the		to missing
174	9	of the 25,000 add range		word missing
197	19	Conall	to Comagie Mellon	correct affiliation
225	1	delete my		miss not mine
229	17	delete <u>the</u>		not part of title
230	24	change Sidney	to Sydney	} correct spelling
		also 372, 10		
247	1	change Bianca	to Bianna	} correct spelling
		also 265, 14; 274, 19; 374, 2		
256	23	1990	to 1994	correct date
290	6	popular	to populace	correct spelling
308	8	perspective	to proportion	correct spelling
383	18	comment	to comma	correct word

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DAVID AND ORA BURTON,)
)
Plaintiffs,)

VS.)

R.J. REYNOLDS TOBACCO CO.,)

and)

THE AMERICAN TOBACCO CO.,)

Defendants.)

COPY

CASE NO. 94-2202-JWL

EXHIBITS TO THE
DEPOSITION OF JAMES KIRBY MARTIN, Ph.D.

February 23, 1996

Job No. 32291

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Bureau Report

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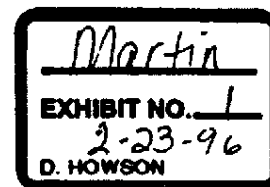
Re: Burton Case

I have prepared this report in response to two questions I was asked to investigate in my capacity as a professional historian. First, I was asked to investigate the extent of public awareness in the United States regarding the possible health risks associated with smoking from the 1800s to the mid-1960s. Second, and for the same time period, I was asked to consider the subject of public awareness in regard to the alleged addictive or habit-forming qualities of smoking. In both instances, I was asked to assess whether this information was received and understood by the general public.

I have gone through an extensive range of historical materials and have come to these conclusions:

1.) In response to the first question, a wide variety of information has been disseminated to the general public and has resulted in very high levels of public awareness and understanding about the possibility of serious diseases--and even premature death--being associated with smoking. Prominently included in this information are references to heart and circulatory diseases.

2.) In response to the second question, a vast amount of information has been disseminated to the general public and has resulted in very high levels of public awareness and understanding with respect to potential difficulties in quitting smoking. These materials invariably discuss nicotine in



association with the difficulties just noted. Numerous sources, dating back to the late 1700s, employ the term "addictive" or equivalent terms, such as "enslaving." These terms were often used loosely and interchangeably with terms such as "habit" and "habit-forming." Regardless of the terminology, the materials conveyed the message that for some persons, quitting smoking could be difficult.

In reaching these conclusions, my investigation encompassed several categories of historical information. These include:

A.) *Laws and Materials Relating to Primary and Secondary Education.* Since the late 1800s, states have required instruction in certain basic curricula, such as health, and have designated certain texts as acceptable for classroom adoption and use. In addition, states have required teachers to become certified to teach in designated special fields, including health education. Kansas was no exception. This state developed an extensive curricula at the primary and secondary levels in regard to health-related issues and also designated what health texts were acceptable for classroom instruction. These texts, dating back to the early twentieth century, uniformly describe tobacco as habit-forming and as a possible source of disease, including heart-related diseases. For example, one key Kansas curriculum bulletin, entitled Course of Study in Health Education with Special Reference to the Effects of Alcohol and Narcotics (1932), specified that teachers were to begin informing students in the

first grade about the dangers of smoking. Such instruction, focusing on cigarettes, was to continue at every grade level through junior high school. Kansas also required such instruction at the high school level. After the early 1930s, school children in Kansas could not have proceeded from the first through twelfth grades without having been informed in repeated classroom presentations about the alleged health consequences of smoking and habit-forming qualities of tobacco consumption. Besides textbooks, teachers in the 1940s and 1950s also began to use visual materials about smoking, including educational films, in classroom presentations.

B.) *Anti-Smoking Organizations.* Dating back to the early 1800s, anti-smoking organizations have concerned themselves with comprehensive public education about the possible health consequences of smoking. For example, as part of the temperance/prohibition movement related to alcohol consumption, the Rev. George Trask of Massachusetts organized the American Anti-Tobacco Society during the 1850s and called for national abstinence in the use of tobacco products. Other organizations--the Woman's Christian Temperance Union (WCTU), the National Anti-Cigarette League, and the International Anti-Cigarette League--likewise sponsored widespread educational campaigns against smoking. Invariably, these groups stressed that smoking, once started, could be difficult to quit. Lucy Page Gaston, superintendent of the International Anti-Cigarette League in 1920, spent a portion of that year in Kansas seeking to spread

the league's anti-smoking message, helping to form the Kansas Anti-Cigarette League, and working to uphold the state's prohibitory law in regard to cigarette sales and consumption (see D. below).

C.) *Government Involvement and Actions.* During the early 1890s the WCTU mounted a national petition drive calling for a constitutional amendment that would prohibit the manufacture or sale of cigarettes in the United States. In 1893 Congress referred the matter to the states, stating that the maintenance of public health was a state issue. State governments reacted by adopting laws prohibiting the sale of cigarettes to minors-- Kansas did so in 1899--and in some instances to adults as well. Kansas adopted such a prohibitory law in 1909, which remained in effect until 1927. Municipalities in some states likewise adopted various bans, including smoking prohibitions on public conveyances. In the post World War II era the federal government became heavily involved in sponsored research regarding the health effects of smoking. Congress held hearings of various kinds with widespread press coverage, and public education campaigns also became a thrust of federal activity through the Surgeon General's office and other government agencies.

D.) *Court Cases and Rulings.* Courts on the national, state, and local levels provided a variety of rulings relating to smoking. In 1900, for instance, the U. S. Supreme Court in *Austin v. Tennessee* ruled that it had "no reason to doubt" that prohibiting the sale of cigarettes in Tennessee was "designed for

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the protection of the public health." The court also stated "that communications are constantly finding their way into the public press denouncing their [cigarettes'] use as fraught with great danger to the youth of both sexes." In 1920 the Kansas Supreme Court, drawing upon the Austin ruling and similar cases, voted unanimously in the Nossaman case to uphold its state prohibitory law. In so ruling, the court stated: "For a number of years there has been a well-settled opinion that the use of cigarettes especially by persons of immature years was harmful, and the courts have recognized that they were deleterious in their effects." As a third example, a lawsuit was brought during 1954 in the U. S. District Court in Kansas City involving allegations by John T. Ross that he had contracted throat cancer from smoking cigarettes. The trial of this case in 1962 received extensive newspaper coverage, particularly in Kansas City newspapers, because of high public interest, indicating widespread public knowledge and concern about the possible health consequences of smoking.

E.) *Newspapers and Popular Magazines.* Beginning in the 1950s, newspapers, whether national, regional, or local in circulation, including those published in Kansas and Missouri, gave extensive coverage to medical and medical-related studies dealing with the possible health risks associated with smoking. These articles made available to the general public findings initially reported at medical conventions and later published in medical, medical-related, and scientific journals. Widely-

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circulating popular magazines, such as Time, Newsweek, Life, and Reader's Digest, followed the same pattern. Reader's Digest, for example, having one of the highest circulation rates of any popular magazine, began covering smoking-related issues in the 1920s. Thereafter the Digest continued to provide extensive coverage of health issues related to smoking and also published articles dealing with ways and methods to stop smoking. Between 1900 and 1953, Dr. John Harvey Kellogg's Good Health Magazine repeatedly published articles that focused on the possible health consequences associated with the use of tobacco. A number of the Good Health articles addressed heart and heart-related diseases in relation to smoking. Several articles likewise warned of the alleged addictive nature of smoking.

F. Books, Pamphlets, and Articles. These items exist in great number. Anti-smoking organizations produced them, as did concerned ministers, public health officials, and well-known figures like the auto manufacturer Henry Ford. Ford's The Little White Slaver (1914-1916), for example, summarized the thinking of several prominent anti-smoking proponents, among them Thomas A. Edison and Booker T. Washington. Ford distributed the four component parts of Little White Slaver through his auto dealerships. The title itself summarizes a widely-held public perception of cigarettes--habit-forming, addictive, enslaving. Ford likewise was one of a number of prominent employers who banned smoking among their employees. As a group, these books, pamphlets, and articles consistently reiterated the message that

smoking adversely affected health and was also habit-forming (a common phrase was getting "addicted to the cigarette habit") because of the presence of nicotine in tobacco. As another example, Dr. John Harvey Kellogg (noted above in E.), was a prolific writer and authored the widely-read Tobaccoism (1922, revised 1937). Kellogg produced a number of health textbooks, sometimes in co-authorship with Professor Michael V. O'Shea of the University of Wisconsin, which addressed both the health effects and habit-forming nature of smoking. Various O'Shea and Kellogg health textbooks received approval for classroom use in Kansas during the 1920s, and Kellogg's and O'Shea's writings were extensively quoted in the Kansas Course of Study... of 1932 (see B. above) for instructing school children about smoking. Kellogg likewise popularized the concept of "tobacco heart," which referred to the stress thought to be placed on the nervous and circulatory systems by smoking. Kansas teachers were expected to instruct school children about the consequences of smoking in relation to "tobacco heart," heart disease, and related circulatory illnesses.

G.) *Medical and Medical-Related Research and Writings.* An abundance of information derived from medical-related research and writings reached the public. Nineteenth- and early twentieth-century anti-smoking tracts invariably described smoking in terms equivalent to habit-forming, and some mentioned heart and heart-related problems. Between 1920 and 1950, occasional medical-related articles considered smoking in

relation to heart disease, cancer, and other health difficulties. After 1950 the number of medical and scientific articles grew exponentially and were covered extensively by the media.

Researchers such as E. Cuyler Hammond and Daniel Horn conducted epidemiological studies concerning the health consequences of smoking. The Hammond-Horn study involved over 187,000 participants and received widespread media coverage in 1954 after an initial report to the American Medical Association. Hammond and Horn also considered the statistical association between smoking and various forms of heart disease. The Emporia Gazette, for instance, carried stories about the Hammond-Horn findings, including the statement that "the effect [of smoking] found on the heart is much more important than the effect found in lung cancer." (Nov. 12, 1954). Other statistical studies, such as Harold Dorn's investigation of about 290,000 World War I veterans (completed in the late 1950s), received press coverage as well. Newspapers also carried articles in which medical authorities and scientists debated the role of smoking in relation to variety of other factors like industrial pollution as possible sources of modern-day health problems. The release of the Report of the Advisory Committee to the Surgeon General, Smoking and Health (1964), which summarized the findings of previous medical and scientific research, became one of the major news stories of the decade. This study also dealt with possible connections between smoking and cardiovascular diseases. On the national level, magazines such as Time and Newsweek, which gave

extensive coverage to the report, likewise referenced the possible linkage between smoking and cardiovascular diseases. On the local level, the Emporia Gazette (Jan. 13, 1964) stated:

"And there was an association--but not yet a proof of cause--between cigarettes and heart and blood vessel disease,..." In an earlier article on the report, the Emporia Gazette (Jan. 11, 1964) noted the possibility of amputation of limbs in referencing certain cardiovascular diseases.

H.) *Television Presentations and Popular Culture Sources.* In its infancy during the 1950s, the medium of television quickly emerged as another major source for the dissemination of information about the possible health consequences of smoking. In 1955 CBS television featured in its highly-regarded See It Now program (May 31 and June 7, hosted by Edward R. Murrow) the medical-scientific debate over possible linkages between cancer and smoking. Based on printed transcripts, the CBS television network gave extensive coverage to Surgeon General Leroy Burney's public announcement in 1957 that "there is an increasing and consistent body of evidence that excessive cigarette smoking is one of the causative factors in lung cancer." Possibly even more thorough was television news coverage given to the 1964 Report of the Advisory Committee to the Surgeon General. Television news programs, as such, served to inform the general public repeatedly about the possible negative health effects of smoking. So too with popular culture sources. The mass production of cigarettes, which began in the 1880s, quickly resulted in a series of slang

expressions that denoted public perceptions. By the late 1880s Americans were employing the slang term "coffin nail" in relation to cigarettes; and by the 1920s other slang terms, including "coffin stick" and "coffin tack," "gasper," "little white hearse plumes," and Ford's "little white slaver," had become part of a common public vocabulary. "Cancer stick" also gained widespread use. Such terms worked their way into popular literature such as novels and into movies and other sources. The message conveyed by these expressions was that cigarettes were not only habit-forming but could also shorten life because of potential adverse health effects.

I have every reason to believe that the body of knowledge derived from the historical sources and materials described in the preceding sections was widely available in the areas where David Burton resided.

From a historical perspective, the accumulated evidence demonstrates that the general public received and understood this information. I am basing this conclusion on the following considerations:

- 1.) The sheer volume of surviving records--and their widespread circulation among the populace--strongly supports this conclusion. For example, Reader's Digest had one of the highest subscription circulation rates of any popular magazine in January 1950 when it published "How Harmful Are Cigarettes?" by Roger

William Riis. This article, according to the editors, generated a large volume of reader response and "aroused more discussion and approval than any recent magazine feature." As a result, the Digest decided to reprint articles from earlier issues on how to stop smoking. Other examples would include questions from concerned individuals that produced published responses from various newspaper columnists. "Dear Abby," strongly anti-smoking in her opinion column, repeatedly answered questions about the habit-forming nature of smoking and possible health effects. So too did the nationally-syndicated columnist, Peter J. Steincrohn, M. D., whose advice appeared in the Kansas City Star during the early 1960s. Local M. D.'s, such as Dr. Edwin P. Jordan, also had such a column that addressed smoking-related concerns, in this case in the Springfield, Missouri, Leader & Press. Persons would not have asked such questions or expressed such concerns, nor would the columnists have responded in print, had there been little or no public awareness or understanding of the issues being raised.

2.) Public opinion polls conducted by the highly regarded Gallup organization and others serve as another confirmation of the high levels of public awareness and knowledge. For instance, in June 1954, the Gallup organization asked: "Have you heard or read anything recently to the effect that cigarette smoking may be a cause of cancer of the lung?" Ninety percent of the respondents answered yes. As a second example, in June-July 1957, after public announcements of the completed findings of

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Hammond and Horn (see G. above), Gallup pollsters asked: "Did you happen to read or hear about the recent report of the American Cancer Society reporting the results of a study on the effects of cigarette smoking?" Seventy-eight percent of the respondents answered yes. Among those respondents who were smokers, 82 percent responded yes. As such, the general populace, and smokers in particular, indicated that they were aware of the most recent study relating to smoking and health.

3.) Government involvement came in waves of legislative, administrative, and judicial action. For instance, some fifteen states adopted laws between the 1890s and 1920s that in some way prohibited the sale and consumption of cigarettes within their respective borders. These laws did not arise in a vacuum of public knowledge or opinion. Nor did government officials act in a void of public pressure. Effective educational campaigning and lobbying by Lucy Page Gaston and the Kansas Anti-Cigarette League helped prevent the repeal of the Kansas prohibitory law in 1920. State education boards and school administrators, as in Kansas, expected teachers to inform and instruct students about the habit-forming nature of smoking, as well as possible health consequences, and they provided support materials in the form of course of study curriculum guides and approved textbooks. In 1957, the findings of a special federally-sponsored study group on smoking and health influenced Surgeon General Dr. Leroy Burney's decision to issue a national warning about the possible health effects of smoking, with particular reference to cancer.

Burney's statement received extensive press coverage. Also in 1957, when asked whether a warning label should appear on cigarette packages, Burney indicated that information about the possible health consequences of smoking was already thoroughly disseminated to the general public. Stated Burney: "Our position is that we have informed the public through the excellent coverage of the press, radio, and TV." So too with the 1964 Report to the Surgeon General. This document also received comprehensive media coverage and generated widespread public discussion of the issue.

4.) Newspapers and other media sources assumed awareness and understanding on the part of the general public. As with Reader's Digest and other magazines, they carried a stream of "how to" articles in regard to quitting smoking. Such articles took for granted that persons wanted to learn about methods to help break their habit. Typical of such coverage were a number of articles in the 1964 Kansas City Kansan that focused on local "stop smoking" meetings sponsored by the Seventh-Day Adventist church, which conducted such programs nationally and made them available to any person interested in quitting smoking. In the early 1960s the Emporia Gazette, as another example, carried stories on local clinics and programs designed to assist persons in that community to stop smoking. When considered in the light of medical columns and other forms of newspaper coverage, such as the extensive coverage given the John Ross case (see D. above), an informed public was showing its concern about smoking, which

would not have been the case had persons not known about the habit-forming qualities of smoking or possible health consequences.

5.) Another way in which the general public demonstrated its awareness and understanding was through the rapid shift to filter-tipped cigarettes during the 1950s. The public did so out of concern over medical and scientific findings, to which the media gave extensive coverage, about cigarette tar as a possible source of cancer. In 1950 only a small percentage of persons smoked filter-tipped cigarettes, but by the end of the decade well over half of all smokers had switched to filter tips. That percentage would continue to climb during the 1960s. In addition, during periods when reports flooded the media about the possible adverse health effects of smoking (1953-54 and 1964, for example), cigarette sales declined briefly but dramatically. These sudden downward shifts in sales and consumption further indicate that the public was not only receiving the message, but in many cases was also acting on the information being presented. To summarize, persons living in the United States could not have avoided coming into contact with materials and information about the alleged habit-forming nature of smoking or possible health consequences, the latter in relation to cancer and various forms of heart and circulatory diseases. Every person who attended public schools, spoke with others about smoking, read newspapers, magazines, books, listened to radio and/or watched television could not have escaped receiving that pervasive and

persistent message. Built on a legacy of writings and anti-smoking commentary dating back to the late 1700s and even to earlier times, such knowledge was not a well-kept secret, but rather was constantly in circulation through society. Thus, the public was not only aware but also had a common understanding of the possible habit-forming qualities and health consequences of smoking. Historical evidence is overwhelming in support of this conclusion.

Source Materials.) In the process of forming my opinions, I have reviewed a wide variety of historical sources. These sources include the following: Books, pamphlets, and articles, some dating to the late 1700s, that focus on the subject of tobacco use, consumption, and possible health consequences; modern books and articles, including medical and medical-related studies, dating from about 1940 to the present, that address the subject of tobacco use, consumption, and possible health consequences; U. S. government records and documents pertaining to tobacco use, consumption, and possible health consequences, from about 1900 to 1965; state laws and statutes regarding the regulation and prohibition of tobacco sales and consumption, with special reference to Kansas, from about 1890 to 1930; court decisions, again with special reference to Kansas, pertaining to state prohibitory laws regarding tobacco sales and consumption; extant records of various anti-smoking organizations, including the National and International Anti-Cigarette leagues;

educational materials relating to state laws and statutes, curriculum mandates and guides, textbook selection procedures and adoption lists as well as selected textbooks, and teacher training and certification requirements, from about 1890 to 1970, with special reference to Kansas; national, regional, and local newspapers, including the New York Times and papers from Kansas City, Missouri and Kansas, Springfield, Missouri, and Emporia, Kansas, for selected years between 1950 and 1965; miscellaneous newspapers from selected years of the twentieth century; popular magazines, including Reader's Digest, Life, Time, Newsweek, and Ebony, for various years between about 1940 and 1965, and Good Health Magazine for the period 1900 to 1953; television commentary addressing the debate over smoking and possible health consequences and anti-smoking television commercials, from about 1955 to 1970; national polling information for selected years, from about 1935 to the present; miscellaneous visual materials, nineteenth and twentieth centuries. In addition, I have read David Burton's two-part deposition, dated November 7 and November 8, 1994; the Plaintiff's First Amended Complaint; the Answer to First Amended Complaint and Affirmative Defenses of R.J. Reynolds Tobacco Company; and the Memorandum and Order of the United States District Court, District of Kansas, dated March 10, 1995.

My opinions and conclusions are based on my research and review of these historical materials as they pertain to this case and on my academic training and experience as a professional

historian specializing in the field of United States history.

I have attached a copy of my curriculum vita which describes my training, qualifications, and professional experiences and also contains a list of my publications.

I have been compensated at a rate of \$195.00 per hour for time spent researching and reviewing historical materials and preparing this report.

I have not testified as an expert at trial or by deposition within the past four years.

James Kirby Martin
January 10, 1996

SOURCE MATERIALS

NINETEENTH- AND EARLY TWENTIETH-CENTURY BOOKS, PAMPHLETS, AND ARTICLES (Chronological Listing)

Pre-Nineteenth Century

[James I, King]. A Counterblaste to Tobacco. London: R. B., 1604. Reprinted in James Craigie, ed., Minor Prose Works of King James VI and I. Edinburgh: Scottish Text Society, 1982.

Rush, Benjamin. "Observations Upon The Influence Of The Habitual Use of Tobacco Upon Health, Morals, and Property," Essays, Literary, Moral & Philosophical. Philadelphia: Thomas & Samuel F. Bradford, 1798.

Nineteenth Century

Journal of Health. Selected issues, Philadelphia, Pa., 1830-1831.

Fowler, Orin, A. M. (pastor of the First Congressional Church). Disquisition on the Evils of Using Tobacco and the Necessity of Immediate and Entire Reformation. Providence: S. R. Weedon, Market Square, 1833.

Shew, Joel, M. D. Tobacco: Its History, Nature, and Effects of the Body and Mind. n. p., circa 1840.

[Trask, Rev. George]. Thoughts and Stories on Tobacco for American Lads; or Uncle Toby's Anti-Tobacco Advice to his Nephew Billy Bruce. Boston: Published for the Author, No. 5 Cornhill, 1852.

[N. Y.]. "A Mediation On Tobacco," National Magazine (November 1855): 434-439.

Trask, Rev. George, ed. Anti-Tobacco Journal. Selected issues, Fitchburg, Mass., 1859-1873.

Higginson, T. W. "A New Counterblast," Atlantic (December 1861): 696-705.

Hawes, Rev. J., D. D. Tobacco, The Bane of the Times. Boston: Hutchinson and Bullard, 1861.

"Tobacco: Its Use and Abuse," Cornhill (November 1862): 605-613.

Griscom, John, M. D. The Use of Tobacco and The Evils, Physical, Mental, and Social, Resulting Therefrom. New York: G. P. Putnam & Son, 1868.

Draper, John C. "Tobaccophagoi and Tobaccophagism," Galaxy (June 1870): 751-757.

Fry, Rev. B. St. J. "Our Fashionable Narcotic," Ladies' Repository (January 1870): 58-61.

Cowan, John. The Use of Tobacco vs. Purity, Chastity, and Sound Health. New York: Cowan & Company, Publishers, 1870.

Wellcome, I. C. The Tobacco Plug and Cigar. By the author, 1875.

Chase, Rev. B. W., A.M. Tobacco: Its Physical, Mental, Moral and Social Influences. By the author, 1878.

Livermore, Abiel Abbott. Anti-Tobacco. Carpenter, Rev. Russell Lant. A Lecture On Tobacco., and Witter, G. F., M. D. On The Use Of Tobacco. Boston: Roberts Brothers, 1883.

Early Twentieth Century

Towns, Charles B. "The Injury of the Tobacco and Its Relation To Other Drug Habits," Century (March 1912): 767-771.

Walsh, F. C., M. D. "The Truth About Tobacco," Technical World (April 1914): 180-185.

Ford, Henry. The Case Against the Little White Slaver, Detroit, Michigan: By the author, 1914-1916.

Frach, Theo. F., A. M., D. D., and Higley, L. H. The Brown God and His White Imps. Butler, Indiana: L. H. Higley, Publisher, 1936.

Kellogg, John Harvey. Tobaccoism. Battle Creek, Michigan: The Modern Medicine Publishing Co., 1922; revised 1937.

O'Shea, Michael V. Tobacco and Mental Efficiency. New York: MacMillan, 1925.

Gottsegan, Jack J. Tobacco: A Study of Its Consumption in the United States. New York: Pitman Publishing Corporation, 1940.

MODERN BOOKS AND ARTICLES (Chronological Listing)

Brooks, Jerome. The Mighty Leaf. Boston: Little Brown and Company, 1952.

- Wynder, E. L. "Neoplastic Diseases," in E. L. Wynder and J. Sarland, The Biologic Effects of Tobacco. Boston: Little, Brown, 1955, pp. 102-132.
- Northrup, Eric. Science Looks at Smoking: A New Inquiry into the Effects of Smoking on Your Health. Intro. by Harry S. N. Greene. New York: Coward-McCann, Inc., 1957.
- Proosdy, C. Van. Smoking: Its Influence on the Individual and Its Role in Social Medicine. Foreword by Richard Doll. Amsterdam: Elsevier Publishing Co., 1960.
- Diehl, Harold S. Tobacco & Your Health: The Smoking Controversy. New York: McGraw-Hill Book Company, 1969.
- Wagner, Susan. Cigarette Country. New York: Praeger Publishers, 1971.
- Sobel, Robert. They Satisfy. New York: Anchor Press/Doubleday, 1978.
- Doran, Gideon. Smoking Paradox: Public Regulation in the Cigarette Industry. Cambridge, Mass.: Abt Books, 1979.
- Dillow, Gordon L. "The Hundred Year War Against the Cigarette," American Heritage (February/March 1981): 3-15.
- Fritschler, A. Lee. Smoking and Politics, 3rd ed. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1983.
- Troyer, Ronald J. and Markle, Gerald E. Cigarettes: The Battle Over Smoking. New Brunswick, New Jersey: Rutgers University Press, 1983.
- Rosenberg, Charles E. "What It Was Like To Be Sick In 1884," American Heritage (October/November 1984): 23-31.
- Bader, Robert Smith. Prohibition in Kansas: A History. Lawrence: University Press of Kansas, 1986.
- Green, Harvey. Fit For America: Health, Fitness, Sport, and American Society. New York: Pantheon Books, 1986.
- Tesh, Sylvia Noble. Hidden Arguments. New Brunswick, New Jersey: Rutgers University Press, 1988.
- Burnham, John C. "American Physicians and Tobacco Use: Two Surgeons General, 1929 and 1964," Bulletin of the History of Medicine (Spring 1989): 1-31.
- Brandt, Allan M. "The Cigarette, Risk, and American Culture," Daedalus (Fall 1990): 155-176.

Meyer, John A. "Cigarette Century," American Heritage (December 1992): 72-80.

MEDICAL AND MEDICAL-RELATED ARTICLES
(Chronological Listing)

Johnson, W. M. "Tobacco Smoking: A Clinical Study," Journal of the American Medical Association, 93 (1929): 665-667, 1909.

Horton, Bayard T. "The Outlook In Thrombo-angiitis Obliterans" Journal of the American Medical Association, (1938): 2184-2189.

English, John P., and Berkson, Joseph. "Tobacco and Coronary Disease," Journal of the American Medical Association, 115 (1940): 1327-1329.

Wynder, E. L., and Graham, E. A. "Tobacco Smoking as a Possible Etiologic Factor in Bronchogenic Carcinoma," Journal of the American Medical Association, 143 (1950): 329-338.

Wynder, E. L., Graham, E. A., and Croninger, A. B. "Experimental Production of Carcinoma with Cigarette Tar," Cancer Research, 13 (1953): 855-864.

Hammond, E. C., and Horn, D. "The Relationship between Human Smoking Habits and Death Rates: A Follow-up of 187,766 Men," Journal of the American Medical Association, 155 (1954): 1316-1328.

Garber, Sidney J. "A Review of the Statistical Evidence on the Association Between Smoking and Lung Cancer," Journal of the American Statistical Association, 50 no. 270 (June 1955): 267-283.

Strong, F. M., et al. "Smoking and Health: Joint Report of the Study Group on Smoking and Health," Science, 125 (1957): 1129-1133.

Wynder, E. L., and Wright, G. "A Study of Tobacco Carcinogenesis, Part 1 (The Primary Fractions)," Cancer, 10 (1957): 255-271.

Born, H. F. "Tobacco Consumption and Morality from Cancer and Other Diseases," Lancet, 275 (1958): 137-139.

Hammond, E. C., and Horn, D. "Smoking and Death Rates--Report on Forty-Four Months of Follow-up of 187,783 Men. Part 1 (Total Mortality), Part 2 (Death Rates by Cause)," Journal of the American Medical Association, 166 (1958): 1159-1172, 1294-1308.

- Hammond, E. C. "Smoking and Death Rates--A Riddle In Cause and Effect," American Scientist, 46 (1958): 331-353.
- Dorn, Harold, F. "Tobacco Consumption and Mortality From Cancer and Other Diseases," Public Health Reports, 74 (1959): 581-593.
- Hammond, E. C. "Smoking in Relation to Heart Disease," Journal of Public Health, 50 (1960): 20-26.
- Spain, David M., and Nathan, Daniel J. "Smoking Habits and Coronary Atherosclerotic Heart Disease," JAMA: Journal of the American Medical Association, 177 (1961): 119-124.
- Hammond, E. Cuyler. "The Effects of Smoking," Scientific American, 207 (1962): 39-51.
- Wilens, Sigmund L., and Cassius, Plair M. "Cigarette Smoking and Arteriosclerosis," Science, 138 (1962): 975-977.

EDUCATIONAL MATERIALS

- Means, Richard K. The Kansas Report. September 1995.
- Means, Richard K. Kansas State Adopted Textbooks Report. October 1995.

NEWSPAPERS

- New York Times, 1948-1965
- Kansas City Star, 1954; 1957; 1962; 1964
- Kansas City Kansan, 1954; 1957; 1962; 1964
- Kansas City Times, 1962; 1964
- Springfield Leader & Press, 1955; 1956; 1957; 1958; 1959; 1960; 1964
- Springfield News-Leader, 1956; 1957; 1958; 1959; 1960
- Emporia Gazette, 1954; 1955; 1961; 1962; 1963; 1964; 1965; 1966; 1967
- Miscellaneous News Service Clippings

POPULAR MAGAZINES

Reader's Digest, 1924-1965

Time, 1950-1965

Newsweek, 1950-1965

Life, 1950-1965

Ebony, 1962, 1974

Good Health Magazine, 1900-1953

GOVERNMENT DOCUMENTS

June 1929 Congressional Record, Volume 71

June 1957 Congressional Hearings (Blatnik Hearings)

1964 Surgeon General's Report, Smoking and Health

Various State and Municipal Laws relating to Prohibitions on Smoking

Kansas Supreme Court Case, State v. Nossaman

United States Supreme Court Case Appeals, Austin v. Tennessee

NATIONAL POLLS

Gallup Polls, 1935-present

Roper On-line Services, 1935-present

TELEVISION

See It Now. CBS News, May 31, 1955. Visual Education

See It Now. CBS News, June 7, 1955. Visual Education

Smoking and Health. CBS News Extra, January 11, 1964. Visual Education

Miscellaneous Transcripts, CBS News, Surgeon General Leroy Burney, 1957

Anti-Smoking Announcements, American Cancer Society, 1967-1988

52005 2189

OTHER SOURCES

Miscellaneous Manuscripts, National Anti-Tobacco League and
International Anti-Tobacco League

Miscellaneous Materials, Woman's Christian Temperance Union

Miscellaneous Pamphlets and Articles, Twentieth Century

Miscellaneous Visual Materials, Nineteenth and Twentieth
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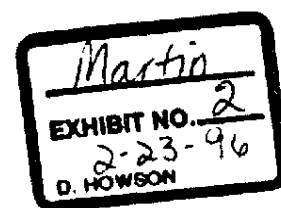
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DRAFT SOURCE MATERIALS DRAFT

NINETEENTH- AND EARLY TWENTIETH-CENTURY BOOKS,
PAMPHLETS, AND ARTICLES (Chronological Listing)

Pre-Nineteenth Century

[James I, King]. A Counterblaste to Tobacco. London: R. B., 1604. Reprinted in James Craigie, ed., Minor Prose Works of King James VI and I. Edinburgh: Scottish Text Society, 1982.

Rush, Benjamin. "Observations Upon The Influence Of The Habitual Use of Tobacco Upon Health, Morals, and Property," Essays, Literary, Moral & Philosophical. Philadelphia: Thomas & Samuel F. Bradford, 1798.

Nineteenth Century

Journal of Health. Selected issues, Philadelphia, Pa., 1830-1831.

Fowler, Orin, A. M. (pastor of the First Congressional Church). Disquisition on the Evils of Using Tobacco and the Necessity of Immediate and Entire Reformation. Providence: S. R. Wenden, Market Square, 1833.

Shew, Joel, M. D. Tobacco: Its History, Nature, and Effects of the Body and Mind. n. p., circa 1840.

[Trask, Rev. George]. Thoughts and Stories on Tobacco for American Lads: or Uncle Toby's Anti-Tobacco Advice to his Nephew Billy Bruce. Boston: Published for the Author, No. 5 Cornhill, 1852.

[N. P. Y.]. "A Mediation On Tobacco," National Magazine (November 1855): 434-439.

Trask, Rev. George, ed. Anti-Tobacco Journal. Selected issues, Fitchburg, Mass., 1859-1873.

Wigginson, T. W. "A New Counterblast," Atlantic (December 1861): 696-705.

Hawes, Rev. J., D. D. Tobacco, The Bane of the Times. Boston: Hutchinson and Bullard, 1861.

"Tobacco: Its Use and Abuse," Cornhill (November 1862): 605-613.

Griscom, John, M. D. The Use of Tobacco and The Evils, Physical, Mental, and Social, Resulting Therefrom. New York: G. P. Putnam & Son, 1868.

Draper, John C. "Tobaccophagoi and Tobaccophagism," Galaxy (June 1870): 751-757.

Fry, Rev. B. St. J. "Our Fashionable Narcotic," Ladies' Repository (January 1870): 58-61.

Cowan, John. The Use of Tobacco vs. Purity, Chastity, and Sound Health. New York: Cowan & Company, Publishers, 1870.

Wellcome, I. G. The Tobacco Plug and Cigar. By the author, 1875.

Chase, Rev. B. W., A.M. Tobacco: Its Physical, Mental, Moral and Social Influences. By the author, 1878.

Livermore, Abiel Abbott. Anti-Tobacco. Carpenter, Rev. Russell Lant. A Lecture On Tobacco., and Witter, G. F., M. D. On The Use Of Tobacco. Boston: Roberts Brothers, 1883.

Early Twentieth Century

Towns, Charles B. "The Injury of the Tobacco and Its Relation To Other Drug Habits," Century (March 1912): 767-771.

Walsh, F. C., M. D. "The Truth About Tobacco," Technical World (April 1914): 180-185.

Ford, Henry. The Case Against the Little White Slaver, Detroit, Michigan: By the author, 1914-1916.

Frech, Theo. B., M. A., M., D. D., and Higley, L. H. The Brown God and His White Imps. Butler, Indiana: L. H. Higley, Publisher, 1916.

Kellogg, John Harvey. Tobaccoism. Battle Creek, Michigan: The Modern Medicine Publishing Co., 1922; revised 1937.

O'Shea, Michael V. Tobacco and Mental Efficiency. New York: MacMillan, 1925.

Gottsegan, Jack J. Tobacco: A Study of Its Consumption in the United States. New York: Pitman Publishing Corporation, 1940.

MODERN BOOKS AND ARTICLES (Chronological Listing)

Brooks, Jerome. The Mighty Leaf. Boston: Little Brown and Company, 1952.

Wynder, E. L. "Neoplastic Diseases," in E. L. Wynder and J. Sarland, The Biologic Effects of Tobacco. Boston: Little, Brown, 1955, pp. 102-132.

Northrup, Eric. Science Looks at Smoking: A New Inquiry into the Effects of Smoking on Your Health. Intro. by Harry S. N. Greene. New York: Coward-McCann, Inc., 1957.

Broosdy, C. Van. Smoking: Its Influence on the Individual and Its Role in Social Medicine. Foreword by Richard Doll. Amsterdam: Elsevier Publishing Co., 1960.

Diehl, Harold S. Tobacco & Your Health: The Smoking Controversy. New York: McGraw-Hill Book Company, 1969.

Wagner, Susan. Cigarette Country. New York: Praeger Publishers, 1971.

Sobel, Robert. They Satisfy. New York: Anchor Press/Doubleday, 1978.

Doran, Gideon. Smoking Paradox: Public Regulation in the Cigarette Industry. Cambridge, Mass.: Abt Books, 1979.

Dillow, Gordon L. "The Hundred Year War Against the Cigarette," American Heritage (February/March 1981): 3-15.

Fritschler, A. Lee. Smoking and Politics, 3rd ed. Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1983.

Troyer, Ronald J., and Markle, Gerald E. Cigarettes: The Battle Over Smoking. New Brunswick, New Jersey: Rutgers University Press, 1983.

Rosenberg, Charles E. "What It Was Like To Be Sick In 1884," American Heritage (October/November 1984): 23-31.

Bader, Robert Smith. Prohibition in Kansas: A History. Lawrence: University Press of Kansas, 1986.

Green, Harvey. Fit For America: Health, Fitness, Sport, and American Society. New York: Pantheon Books, 1986.

Tash, Sylvia Noble. Hidden Arguments. New Brunswick, New Jersey: Rutgers University Press, 1988.

Burnham, John C. "American Physicians and Tobacco Use: Two Surgeons General, 1929 and 1964," Bulletin of the History of Medicine (Spring 1989): 1-31.

Brandt, Allan M. "The Cigarette, Risk, and American Culture," Daedalus (Fall 1990): 155-176.

Meyer, John A. "Cigarette Century," American Heritage (December 1992): 72-80.

MEDICAL AND MEDICAL-RELATED ARTICLES
(Chronological Listing)

Johnson, W. M. "Tobacco Smoking: A Clinical Study," Journal of the American Medical Association, 93 (1929): 665-667, 1909.

Horton, Bayard T. "The Outlook In Thrombo-angiitis Obliterans" Journal of the American Medical Association, (1938): 2184-2189.

English, John P., and Berkson, Joseph. "Tobacco and Coronary Disease," Journal of the American Medical Association, 115 (1940): 1327-1329.

Wynder, E. L., and Graham, E. A. "Tobacco Smoking as a Possible Etiologic Factor in Bronchogenic Carcinoma," Journal of the American Medical Association, 143 (1950): 329-338.

Wynder, E. L., Graham, E. A., and Croninger, A. B. "Experimental Production of Carcinoma with Cigarette Tar," Cancer Research, 13 (1953): 855-864.

Hammond, E. C., and Horn, D. "The Relationship between Human Smoking Habits and Death Rates: A Follow-up of 187,766 Men," Journal of the American Medical Association, 155 (1954): 1316-1328.

Cutler, Sidney J. "A Review of the Statistical Evidence on the Association Between Smoking and Lung Cancer," Journal of the American Statistical Association, 50 no. 270 (June 1955): 267-283.

Strong, F. M., et al. "Smoking and Health: Joint Report of the Study Group on Smoking and Health," Science, 125 (1957): 1129-1133.

Wynder, E. L., and Wright, G. "A Study of Tobacco Carcinogenesis, Part 1 (The Primary Fractions)," Cancer, 10 (1957): 255-271.

Dorn, H. F. "Tobacco Consumption and Morality from Cancer and Other Diseases," Lancet, 275 (1958): 137-139.

Hammond, E. C., and Horn, D. "Smoking and Death Rates--Report on Forty-Four Months of Follow-up of 187,783 Men. Part 1 (Total Mortality), Part 2 (Death Rates by Cause)," Journal of the American Medical Association, 166 (1958): 1159-1172, 1294-1308.

Hammond, E. C. "Smoking and Death Rates--A Riddle In Cause and Effect," American Scientist, 46 (1958): 331-353.

Dorn, Harold, F. "Tobacco Consumption and Mortality From Cancer and Other Diseases," Public Health Reports, 74 (1959): 581-593.

Hammond, E. C. "Smoking in Relation to Heart Disease," Journal of Public Health, 50 (1960): 20-26.

Spain, David M., and Nathan, Daniel J. "Smoking Habits and Coronary Atherosclerotic Heart Disease," JAMA: Journal of the American Medical Association, 177 (1961): 119-124.

Hammond, E. Cuyler. "The Effects of Smoking," Scientific American, 207 (1962): 39-51.

Wilens, Sigmund L., and Cassius, Plair M. "Cigarette Smoking and Arteriosclerosis," Science, 138 (1962): 975-977.

EDUCATIONAL MATERIALS

Means, Richard K. The Kansas Report. September 1995.

Means, Richard K. Kansas State Adopted Textbooks Report. October 1995.

NEWSPAPERS

New York Times, 1948-1965

Kansas City Star, 1954; 1957; 1962; 1964

Kansas City Kansas, 1954; 1957; 1962; 1964

Kansas City Times, 1962; 1964

Springfield Leader & Press, 1955; 1956; 1957; 1958; 1959; 1960; 1964

Springfield News-Leader, 1956; 1957; 1958; 1959; 1960

Emporia Gazette, 1954; 1955; 1961; 1962; 1963; 1964; 1965; 1966; 1967

Miscellaneous News Service Clippings

POPULAR MAGAZINES

Reader's Digest, 1924-1965

Time, 1950-1965

Newsweek, 1950-1965

Life, 1950-1965

Ebony, 1962, 1974

Good Health Magazine, 1900-1953

GOVERNMENT DOCUMENTS

June 1929 Congressional Record, Volume 71

June 1957 Congressional Hearings (Blatnik Hearings)

1964 Surgeon General's Report, Smoking and Health

Various State and Municipal Laws relating to Prohibitions on Smoking

Kansas Supreme Court Case, State v. Nossaman

United States Supreme Court Case Appeals, Austin v. Tennessee

NATIONAL POLLS

*Gallup Polls, 1935-1971 ~~PRESENT~~

Reper On-line Services, 1935-present

TELEVISION

See It Now. CBS News, May 31, 1955. Visual Education

See It Now. CBS News, June 7, 1955. Visual Education

Smoking and Health. CBS News Extra, January 11, 1964. Visual Education

Miscellaneous Transcripts, CBS News, Surgeon General Leroy Burney, 1957

Anti-Smoking Announcements, American Cancer Society, 1967-1988

OTHER SOURCES

Miscellaneous Manuscripts, National Anti-Tobacco League and
International Anti-Tobacco League

Miscellaneous Materials, Woman's Christian Temperance Union

Miscellaneous Pamphlets and Articles, Twentieth Century

Miscellaneous Visual Materials, Nineteenth and Twentieth
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DRAFT, DRAFT

Re: Burton Case

I have prepared this report in response to two questions I was asked to investigate in my capacity as a professional historian. First, I was asked to investigate the extent of public awareness in the United States regarding the possible health risks associated with smoking from the 1800s to the mid-1960s. Second, and for the same time period, I was asked to consider the subject of public awareness in regard to the alleged addictive or habit-forming qualities of smoking. In both instances, I was asked to assess whether this information was received and understood by the general public.

I have gone through an extensive range of historical materials and have come to these conclusions:

1.) In response to the first question, a wide variety of information has been disseminated to the general public and has resulted in very high levels of public awareness and understanding about the possibility of serious diseases--and even premature death--being associated with smoking. Prominently included in this information are references to heart and circulatory diseases.

2.) In response to the second question, a vast amount of information has been disseminated to the general public and has resulted in very high levels of public awareness and understanding with respect to potential difficulties in quitting smoking. These materials invariably discuss nicotine in

association with the difficulties just noted. Numerous sources, dating back to the late 1700s, employ the term "addictive" or equivalent terms, such as "enslaving." These terms were often used loosely and interchangeably with terms such as "habit" and "habit-forming." Regardless of the terminology, the materials conveyed the message that for some persons, quitting smoking could be difficult.

In reaching these conclusions, my investigation encompassed several categories of historical information. These include:

A.) *Laws and Materials Relating to Primary and Secondary Education.* Since the late 1800s, states have required instruction in certain basic curricula, such as health, and have designated certain texts as acceptable for classroom adoption and use. In addition, states have required teachers to become certified to teach in designated special fields, including health education. Kansas was no exception. This state developed an extensive curriculum at the primary and secondary levels in regard to health-related issues and also designated what health texts were acceptable for classroom instruction. These texts, dating back to the early twentieth century, uniformly describe tobacco as habit-forming and as a possible source of disease, including heart-related diseases. For example, one key Kansas curriculum bulletin, entitled Course of Study in Health Education with Special Reference to the Effects of Alcohol and Narcotics (1932), specified that teachers were to begin informing students in the

first grade about the dangers of smoking. Such instruction, focusing on cigarettes, was to continue at every grade level through junior high school. Kansas also required such instruction at the high school level. After the early 1930s, school children in Kansas could not have proceeded from the first through twelfth grades without having been informed in repeated classroom presentations about the alleged health consequences of smoking and habit-forming qualities of tobacco consumption.

Besides textbooks, teachers in the 1940s and 1950s also began to use visual materials about smoking, including educational films, in classroom presentations.

B.) *Anti-Smoking Organizations.* Dating back to the early 1800s, anti-smoking organizations have concerned themselves with comprehensive public education about the possible health consequences of smoking. For example, as part of the temperance/prohibition movement related to alcohol consumption, the Rev. George Trask of Massachusetts organized the American Anti-Tobacco Society during the 1850s and called for national abstinence in the use of tobacco products. Other organizations--the Woman's Christian Temperance Union (WCTU), the National Anti-Cigarette League, and the International Anti-Cigarette League--likewise sponsored widespread educational campaigns against smoking. Invariably, these groups stressed that smoking, once started, could be difficult to quit. Lucy Page Gaston, superintendent of the International Anti-Cigarette League in 1920, spent a portion of that year in Kansas seeking to spread

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the league's anti-smoking message, helping to form the Kansas Anti-Cigarette League, and working to uphold the state's prohibitory law in regard to cigarette sales and consumption (see D. below).

C.) *Government Involvement and Actions.* During the early 1890s the WCTU mounted a national petition drive calling for a constitutional amendment that would prohibit the manufacture or sale of cigarettes in the United States. In 1893 Congress referred the matter to the states, stating that the maintenance of public health was a state issue. State governments reacted by adopting laws prohibiting the sale of cigarettes to minors-- Kansas did so in 1899--and in some instances to adults as well. Kansas adopted such a prohibitory law in 1909, which remained in effect until 1927. Municipalities in some states likewise adopted various bans, including smoking prohibitions on public conveyances. In the post World War II era the federal government became heavily involved in sponsored research regarding the health effects of smoking. Congress held hearings of various kinds with widespread press coverage, and public education campaigns also became a thrust of federal activity through the Surgeon General's office and other government agencies.

D.) *Court Cases and Rulings.* Courts on the national, state, and local levels provided a variety of rulings relating to smoking. In 1900, for instance, the U. S. Supreme Court in *Austin v. Tennessee* ruled that it had "no reason to doubt" that prohibiting the sale of cigarettes in Tennessee was "designed for

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the protection of the public health." The court also stated "that communications are constantly finding their way into the public press denouncing their [cigarettes'] use as fraught with great danger to the youth of both sexes." In 1920 the Kansas Supreme Court, drawing upon the Austin ruling and similar cases, voted unanimously in the Nossaman case to uphold its state prohibitory law. In so ruling, the court stated: "For a number of years there has been a well-settled opinion that the use of cigarettes especially by persons of immature years was harmful, and the courts have recognized that they were deleterious in their effects." As a third example, a lawsuit was brought during 1954 in the U. S. District Court in Kansas City involving allegations by John T. Ross that he had contracted throat cancer from smoking cigarettes. The trial of this case in 1962 received extensive newspaper coverage, particularly in Kansas City newspapers, because of high public interest, indicating widespread public knowledge and concern about the possible health consequences of smoking.

E.) *Newspapers and Popular Magazines.* Beginning in the 1950s, newspapers, whether national, regional, or local in circulation, including those published in Kansas and Missouri, gave extensive coverage to medical and medical-related studies dealing with the possible health risks associated with smoking. These articles made available to the general public findings initially reported at medical conventions and later published in medical, medical-related, and scientific journals. Widely-

circulating popular magazines, such as Time, Newsweek, Life, and Reader's Digest, followed the same pattern. Reader's Digest, for example, having one of the highest circulation rates of any popular magazine, began covering smoking-related issues in the 1920s. Thereafter the Digest continued to provide extensive coverage of health issues related to smoking and also published articles dealing with ways and methods to stop smoking. Between 1900 and 1953, Dr. John Harvey Kellogg's Good Health Magazine repeatedly published articles that focused on the possible health consequences associated with the use of tobacco. A number of the Good Health articles addressed heart and heart-related diseases in relation to smoking. Several articles likewise warned of the alleged "addictive" nature of smoking.

F.) Books, Pamphlets, and Articles. These items exist in great number. Anti-smoking organizations produced them, as did concerned ministers, public health officials, and well-known figures like the auto manufacturer Henry Ford. Ford's The Little White Slaver (1914-1916), for example, summarized the thinking of several prominent anti-smoking proponents, among them Thomas A. Edison and Booker T. Washington. Ford distributed the four component parts of Little White Slaver through his auto dealerships. The title itself summarizes a widely-held public understanding of cigarettes--habit-forming, addictive, enslaving. Ford likewise was one of a number of prominent employers who banned smoking among their employees. As a group, these books, pamphlets, and articles consistently reiterated the message that

smoking adversely affected health and was also habit-forming (a common phrase was getting "addicted to the cigarette habit") because of the presence of nicotine in tobacco. As another example, Dr. John Harvey Kellogg (noted above in E.), was a prolific writer and authored the widely-read Tobaccoism (1922, revised 1937). Kellogg produced a number of health textbooks, sometimes in co-authorship with Professor Michael V. O'Shea of the University of Wisconsin, which addressed both the health effects and habit-forming nature of smoking. Various O'Shea and Kellogg health textbooks received approval for classroom use in Kansas during the 1920s, and Kellogg's and O'Shea's writings were extensively quoted in the Kansas Course of Study... of 1932 (see B. above) for instructing school children about smoking. Kellogg likewise popularized the concept of "tobacco heart," which referred to the stress thought to be placed on the nervous and circulatory systems by smoking. Kansas teachers were expected to instruct school children about the consequences of smoking in relation to "tobacco heart," heart disease, and related circulatory illnesses.

G.) *Medical and Medical-Related Research and Writings.* An abundance of information derived from medical-related research and writings reached the public. Nineteenth- and early twentieth-century anti-smoking tracts invariably described smoking in terms equivalent to habit-forming, and some mentioned heart and heart-related problems. Between 1920 and 1950, occasional medical-related articles considered smoking in

relation to heart disease, cancer, and other health difficulties. After 1950 the number of medical and scientific articles grew exponentially and were covered extensively by the media.

Researchers such as E. Cuyler Hammond and Daniel Horn conducted epidemiological studies concerning the health consequences of smoking. The Hammond-Horn study involved over 187,000 participants and received widespread media coverage in 1954 after an initial report to the American Medical Association. Hammond and Horn also considered the statistical association between smoking and various forms of heart disease. The Emporia Gazette, for instance, carried stories about the Hammond-Horn findings, including the statement that "the effect [of smoking] found on the heart is much more important than the effect found in lung cancer. . . ." (Nov. 12, 1954). Other statistical studies, such as Harold Dorn's investigation of 290,000 World War I veterans (completed in the late 1950s), received press coverage as well. Newspapers also carried articles in which medical authorities and scientists debated the role of smoking in relation to variety of other factors like industrial pollution as possible sources of modern-day health problems. The release of the Surgeon General's 1964 report, Smoking and Health, which summarized the findings of previous medical and scientific research, became one of the major news stories of the decade. This study also dealt with possible connections between smoking and cardiovascular diseases. On the national level, magazines such as Time and Newsweek, which gave extensive coverage to the Surgeon General's report, likewise

referenced the possible linkage between smoking and cardiovascular diseases. On the local level, the Emporia Gazette (Jan. 13, 1964) stated: "And there was an association--but not yet a proof of cause--between cigarettes and heart and blood vessel disease,..." In another article on the Surgeon General's report, the Emporia Gazette (Jan. 11, 1964) noted the possibility of amputation of limbs in referencing certain cardiovascular diseases.

H.) *Television Presentations and Popular Culture Sources.*

In its infancy during the 1950s, the medium of television quickly emerged as another major source for the dissemination of information about the possible health consequences of smoking. In 1955 CBS television featured in its highly-regarded "See It Now" program (May 31 and June 7, hosted by Edward R. Murrow) the medical-scientific debate over possible linkages between cancer and smoking. Based on printed transcripts, CBS and the other major networks gave extensive coverage to Surgeon General Leroy Burney's public announcement in 1957 that "there is an increasing and consistent body of evidence that excessive cigarette smoking is one of the causative factors in lung cancer." Possibly even more thorough was television news coverage given to Surgeon General Luther Terry's 1964 report. Television news programs, as such, served to warn the general public repeatedly about the possible negative health effects of smoking. So too with popular culture sources. The mass production of cigarettes, which began in the 1880s, quickly resulted in a series of slang expressions

that denoted public perceptions. By the late 1880s Americans were employing the slang term "coffin nail" in relation to cigarettes; and by the 1920s other slang terms, including "coffin stick" and "coffin tack," "gasper," "little white hearse plumes," and Ford's "little white slaver," had become part of a common public vocabulary. "Cancer stick" also gained widespread use. Such terms worked their way into popular literature such as novels and into movies and other sources. The message conveyed by these expressions was that cigarettes were not only habit-forming but could also shorten life because of potential adverse health effects.

I have every reason to believe that the body of knowledge derived from the historical sources and materials described in the preceding sections were widely available in the areas where David Burton resided.

From a historical perspective, the accumulated evidence demonstrates that the general public received and understood this information. I am basing this conclusion on the following considerations:

- 1.) The sheer volume of surviving records--and their widespread circulation among the populace--strongly supports this conclusion. For example, Reader's Digest had one of the highest subscription circulation rates of any popular magazine in January 1950 when it published "How Harmful Are Cigarettes?" by Roger

William Riis. This article, according to the editors, generated a large volume of reader response and "aroused more discussion and approval than any recent magazine feature." As a result, the Digest decided to reprint articles from earlier issues on how to stop smoking. Other examples would include questions from concerned individuals that produced published responses from various newspaper columnists. "Dear Abby," strongly anti-smoking in her opinion column, repeatedly answered questions about the habit-forming nature of smoking and possible health effects. So too did the nationally-syndicated columnist, Peter J. Steincrohn, M. D., whose advice appeared in the Kansas City Star during the early 1960s. Local M. D.'s, such as Dr. Edwin P. Jordan, also had such a column that addressed smoking-related concerns, in this case in the Springfield, Missouri, Leader & Press. Persons would not have asked such questions or expressed such concerns, nor would the columnists have responded in print, had there been little or no public awareness or understanding of the issues being raised.

2.) Public opinion polls conducted by the highly regarded Gallup organization and others serve as another confirmation of the high levels of public awareness and knowledge. For instance, in June 1954, the Gallup organization asked: "Have you heard cigarettes cause lung cancer?" Over 89 percent of the respondents answered yes. As a second example, in June-July 1957, after public announcements of the completed findings of Hammond and Horn (see G. above), Gallup pollsters asked: "Did

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you happen to hear or read about the recent report of the American Cancer Society reporting the results of a study on the effects of cigarette smoking?" Seventy-seven percent of the respondents answered yes. Among those respondents who were smokers, 82 percent responded yes. As such, the general populace, and smokers in particular, indicated that they were aware of the most recent study relating to smoking and health.

3.) Government involvement came in waves of legislative, administrative, and judicial action. For instance, some fifteen states adopted laws between the 1890s and 1920s that in some way prohibited the sale and consumption of cigarettes within their respective borders. These laws did not arise in a vacuum of public knowledge or opinion. Nor did government officials act in a void of public pressure. Effective educational campaigning and lobbying by Lucy Page Gaston and the Kansas Anti-Cigarette League helped prevent the repeal of the Kansas prohibitory law in 1920. State education boards and school administrators, as in Kansas, expected teachers to inform and instruct students about the habit-forming nature of smoking, as well as possible health consequences, and they provided support materials in the form of course of study curriculum guides and approved textbooks. In 1957, the findings of a special federally-sponsored study group on smoking and health influenced Surgeon General Dr. Leroy Burney's decision to issue a national warning about the possible health effects of smoking, with particular reference to cancer. Burney's statement received extensive press coverage. Also in

1957, when asked whether a warning label should appear on cigarette packages, Burney indicated that information about the possible health consequences of smoking was already thoroughly disseminated to the general public. Stated Burney: "Our position is that we have informed the public through the excellent coverage of the press, radio, and TV." So too with the 1964 Surgeon General's report. This document also received comprehensive media coverage and generated widespread public discussion of the issue.

4.) Newspapers and other media sources assumed awareness and understanding on the part of the general public. As with Reader's Digest and other magazines, they carried a stream of "how to" articles in regard to quitting smoking. Such articles took for granted that persons wanted to learn about methods to help break their habit. Typical of such coverage were a number of articles in the 1964 Kansas City Kansan that focused on local "stop smoking" meetings sponsored by the Seventh-Day Adventist church, which conducted such programs nationally and made them available to any person interested in quitting smoking. In the early 1960s the Emporia Gazette, as another example, carried stories on local clinics and programs designed to assist persons in that community to stop smoking. When considered in the light of medical columns and other forms of newspaper coverage, such as the extensive coverage given the John Ross case (see D. above), an informed public was showing its concern about smoking, which would not have been the case had persons not known about the

habit-forming qualities of smoking or possible health consequences.

5.) Another way in which the general public demonstrated its awareness and understanding was through the rapid shift to filter-tipped cigarettes during the 1950s. The public did so out of concern over medical and scientific findings, to which the media gave extensive coverage, about cigarette tar as a possible source of cancer. In 1950 only a small percentage of persons smoked filter-tipped cigarettes, but by the end of the decade well over half of all smokers had switched to filter tips. That percentage would continue to climb during the 1960s. In addition, during periods when reports flooded the media about the possible adverse health effects of smoking (1954 and 1964, for example), cigarette sales declined briefly but dramatically. These sudden downward shifts in sales per capita further indicate that the public was not only receiving the message but in many cases acting on the information being presented.

To summarize, persons living in the United States could not have avoided coming into contact with materials and information about the alleged habit-forming nature of smoking or possible health consequences, the latter in relation to cancer and various forms of heart and circulatory diseases. Every person who attended public schools, spoke with others about smoking, read newspapers, magazines, books, listened to radio and/or watched television could not have escaped receiving that pervasive and persistent message. Built on a legacy of writings and anti-

smoking commentary dating back to the late 1700s and even to earlier times, such knowledge was not a well-kept secret but rather constantly in circulation through society. Thus the public was not only aware but also had a common understanding of the possible habit-forming qualities and health consequences of smoking. Historical evidence is overwhelming in support of this conclusion.

Source Materials.) In the process of forming my opinions, I have reviewed a wide variety of historical sources. These sources include the following: Books, pamphlets, and articles, some dating to the late 1700s, that focus on the subject of tobacco use, consumption, and possible health consequences; modern books and articles, including medical and medical-related studies, dating from about 1940 to the present, that address the subject of tobacco use, consumption, and possible health consequences; U. S. government records and documents pertaining to tobacco use, consumption, and possible health consequences, from about 1900 to 1965; state laws and statutes regarding the regulation and prohibition of tobacco sales and consumption, with special reference to Kansas, from about 1890 to 1930; court decisions, again with special reference to Kansas, pertaining to state prohibitory laws regarding tobacco sales and consumption; extant records of various anti-smoking organizations, including the National and International Anti-Cigarette leagues; educational materials relating to state laws and statutes,

curriculum mandates and guides, textbook selection procedures and adoption lists as well as selected textbooks, and teacher training and certification requirements, from about 1890 to 1970, with special reference to Kansas; national, regional, and local newspapers, including the New York Times and papers from Kansas City, Missouri and Kansas, Springfield, Missouri, and Emporia, Kansas, for selected years between 1950 and 1965; miscellaneous newspapers from selected years of the twentieth century; popular magazines, including Reader's Digest, Life, Time, Newsweek, and Ebony, for various years between about 1940 and 1965, and Good Health Magazine for the period 1900 to 1953; television commentary addressing the debate over smoking and possible health consequences and anti-smoking television commercials, from about 1955 to 1970; national polling information for selected years, from about 1935 to the present; miscellaneous visual materials, nineteenth and twentieth centuries. In addition, I have read David Burton's two-part deposition, dated November 7 and November 8, 1994; the Plaintiff's First Amended Complaint; the Answer to First Amended Complaint and Affirmative Defenses of R.J. Reynolds Tobacco Company; and the Memorandum and Order of the United States District Court, District of Kansas, dated March 10, 1995.

My opinions and conclusions are based on my research and review of these historical materials as they pertain to this case and on my academic training and experience as a professional historian specializing in the field of United States history.

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I have attached a copy of my curriculum vita which describes my training, qualifications, and professional experiences and also contains a list of my publications.

I have not testified as an expert at trial or by deposition within the past four years.

J. K. Martin
James Kirby Martin
date
JANUARY 8, 1996

produced by RJRTC
in
HUMPHREY

GENERAL PRESENTATION

November 16, 1995

I. Introduction

A. Public Impressions (or Awareness) of the Possible Health Consequences of Smoking, in this case in relation to smoking and Heart Related Diseases

B. Public Impressions (or Awareness) of the Alleged Addictive Qualities of Smoking, with special reference to Cigarettes.

C. Conclusions at Outset: Information widely if not completely disseminated through society, dating back to the first introduction of tobacco products in European and western culture. Use of tobacco has been always controversial--and that persistent controversy has produced overwhelming amounts of information to make the public aware on both counts.

D. Point may be established by quote from King James I of England from his (1604) pamphlet, A Counterblaste to Tobacco: "A custom loathsome to the eye, hateful to the nose, harmful to the brain, dangerous to the lungs." (Offer brief context).

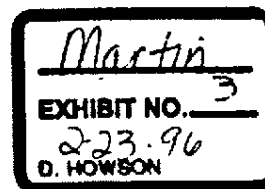
E. Resulted in major debate in Europe over next two centuries re. the consumption of tobacco. Huge scientific, medical debate (Arents materials: 227 diseases use of tobacco would have positive effects; 51 diseases, ailments induced by tobacco). Note: We can check heart-related diseases.

(Debated within humoral theory of disease, balancing four bodily humours of blood, phlegm, black bile, and yellow bile--binary qualities hot and cold, moist and dry). Point: phlegm, for instance, was cold and moist, blood hot and moist--too much phlegm, take tobacco because properties were hot and dry, restore humoral balance. Tobacco help expel excess moisture from body, so good for treating colds, reducing swelling, dealing malaria and cholera. Also important in alleviating hunger and thirst.

E. Debate carried over to the American provinces, after Revolution the United States.

II. Nineteenth-Century Pamphlets and Tobacco-Alcohol Temperance Debate

A. Enter Benjamin Rush (1746-1813), pre-eminent physician, signed Dec. Independence. Great interest health-related issues, publishes extensively, inc. 1784 Inquiry, moral and physical thermometer, then 1798 publishes "Observations upon the Influence of the Habitual Use of Tobacco upon Health, Morals, and Property" (1798). Quote: "The progress of habit in the use of Tobacco is exactly the same as in the use of spiritous



liquors. The slaves of it begin, by using it only after dinner-
-...." See also p. 265, pulmonary example, and p. 270, tobacco
and thirst.

1. Father of temperance movement, father of
American psychiatry, rightfully should be considered father of
anti-tobacco movement in the United States.

2. Pamphlet sets tone and range of arguments.

A. Speaks of tobacco as enslaving (addictive)

B. Suggests health consequences

C. Defies earlier medical knowledge: makes
argument that tobacco can lead to strong drink because causes
virtually unquenchable thirst.

D. By implication makes mental, moral (vices),
and diseases link.

E. Remember, an advocate of temperance, not
prohibition.

B. Go over nineteenth-century anti-tobacco sentiments.

A. Kindred spirit of temperance/prohibition
movement.

B. From the Journal of Health, no. 3,
Philadelphia, October 7, 1929: "Tobacco is, in fact, an absolute
poison." "The almost constant thirst occasioned by smoking and
chewing has, in numerous instances, it is to be feared, led to
the intemperate use of ardent spirits." "So detestable and
pernicious a habit." (Did not look for heart or addict
references, most likely there. Arents Doc. 3191).

C. Rev. George Trask, 1850s-1870s, out of
Fitchburg, Mass., published Anti-Tobacco Journal, 1853 Uncle
Toby's Advice to Boys. Various comments ATJ: July and August
1860: "They [snuffing women] are all slaves." April and May
1872: "Tobacco is evidently the cause of a vast amount of
pulmonary disease." Oct., Nov., Dec. 1873: [very early reference
to the use of cigarettes] "Do you say no decent young man would
ever marry a lady addicted to smoking?" (Again from Arents, same
comment as above).

Trask, American Anti-Tobacco Society, also had a
pledge: "We, the subscribers, believing the use of tobacco,
whether in the form of smoking, snuffing, or chewing, to be
uncleanly, unhealthy, and expensive, hereby pledge ourselves to
abstain from its use totally and forever." Dated April 4, 1852.

D. Go into pamphlets, emerging themes of mental,
moral, and health problems, esp. as related to alleged addiction
and heart problems.

III. Lucy Page Gaston (1860-1924) and Kansas

A. Perhaps rise of LPG and mass production cigarettes
not coincidental. Grew up in temperance family; gets involved
in WCTU; puts special emphasis on cigarette--cigarette face,
furfural, Dr. D. H. Kress and silver nitrate treatment; death in

1924 throat cancer.

B. LPG significant because results in national movement against the cigarette--Chicago Anti-Cigarette League to National Anti-Cigarette League to International Anti-Cigarette League 1899-1920s [major educational campaigns, such as publication of The Boy and newspaper out of Harvey, Illinois]. Early 1890s pressure Congress, respond health a state issue. Results in what will be fifteen state Prohibition laws against cigarette between 1890s and 1920s.

C. 1920 LPG runs for presidency, also goes to Kansas, and also works to have Kansas Anti-Cigarette law upheld. [use document from supreme court ruling, also selected articles]. Law initially approved 1909, modified 1927 in favor of strict law against sale of cigarettes to minors under age twenty-one.

IV. Broader Effects of Anti-Cigarette Campaign

A. Analysis of Henry Ford's The Little White Slaver.

[discuss pamphlet, share copies, remember to draw attention to comments by Booker T. Washington, pp. 49-50]

B. Industrialists, large firms make clear won't hire smokers, ban smoking of cigarettes, and the like--<Thomas Edison, Sears, Roebuck, and Co., Montgomery Ward, others. Reasons fundamentally same "make good boy go bad." Rush arguments, mental, moral, physical.

C. John Harvey Kellogg (1852-1943) and the "good health" movement. biologic living. Battle Creek Sanitarium. Development of certain "health" foods, such as corn flakes. Spread the good health message far and wide. Two primary ways:

1. Analysis of Good Health magazine [handouts] Probably about 25,000 copies printed per monthly issue but no one knows for sure; may have been more; also many articles reprinted in wide circulating Literary Digest.
2. Kellogg as textbook writer. In 1888 his First Book in Physiology and Hygiene appeared (Harper & Brothers) for primary grades. Then in 1908 began collaboration with Michael V. O'Shea of University of Wisconsin, writing for the Macmillan Company. Kept collaboration going into 1920s. A prolific writer, also authored Tobaccoism, summary materials Good Health.
3. No doubt influenced key individuals such as Henry Ford, and textbook writings will have a national influence in disseminating Kellogg's health concerns re. tobacco and cigarettes (addiction and heart disease).

V. Primary, Secondary Education with Special Emphasis on Kansas

A. Case of Kansas

1. 1899 began practice uniform textbook adoption
2. Certification for hygiene and health instruction was required beginning in 1886
3. Beginning in 1894, if not before, state education department began issuing courses of study, curriculum

plans, and manuals, etc., specifying what materials and themes teachers should emphasize in the classroom. In area of physiology and hygiene (health education), great amount of material on tobacco.

4. Although health education not required at elementary level until 1944, regularly a part of curriculum based on text adoption lists.

5. One of most important of curricular guides, COURSE OF STUDY IN HEALTH EDUCATION "With Special Reference to the Effects of Alcohol and Narcotics." Note contains outlines for all elementary and middle school grades (1-8). Curriculum guide mentions Kellogg's writings 7 times and Michael O'Shea 5 times (in partial copy). No reason to assume this guide not used into 1940s. [Give examples from pamphlet].

6. Textbooks: Elementary--Emerson, Charters, Wilson; Secondary: Cockefair, Burkard (Advertising), Address, Charters, Burkard (tobacco heart), Wilson (Raymond Pearl)

V. Transition: National Publications and Cancer Scare

A. If Good Health did not have a huge national audience, Reader's Digest circulated in the millions. Carried forward on themes from Kellogg and others. [see handout].

1. RD helps set tone for decade of 1950s when Roger William Kils article, "How Harmful Are Cigarettes?" appeared in January 1950. Summary of previous statements, opinions.

2. Also in 1950 Drs. Evarts Graham and Ernst Wynder of Washington University School of Medicine began to report (retrospectively) on cigarette smoking and lung cancer. May 1950 article in JAMA based on 684 cases, titled "Tobacco Smoking as a Possible Etiologic Factor in Bronchogenic Carcinoma."

B. New phase of medical inquiry, rise of epidemiological studies which would feed into and build on findings of Graham and Wynder. By 1954 safe to say cancer scare: But what of heart disease?

C. 1954--Major event initial release of Hammond and Horn epidemiological study involving 187,766 white males ages 50-70.

1. unclear information re. Gallup polls. Thought GP asked something about were you aware that smoking may be a source of lung cancer with high percentage response. Poll I have is on page 1247, an opinion, do you think smoking is a cause of lung cancer?

D. 1957--Major events: 1. Study Group on Smoking and Health, released March-April; 2. Final Hammond and Horn report, June; 3. Surgeon General Burney's response and public announcement re. warning on cancer, July; 4. Sen. Wallace Bennett proposes warning label; 5. Blatnik hearings, Surgeon General Burney and John Heller of National Cancer Institute; 6. Gallup Poll material and public awareness, esp. in relation to heart disease, p. 1501. Also, note extra articles debate.

E. 1958--1. May 1958, Ernst Wynder Seventh-Day Adventist Study, article Time, no local coverage; 2 Harold F. Dorn, chief statistician for National Institutes of Health, Veteran's study, July (local coverage Springfield). Remember: Scientific American 1962 article Hammond, comparisons Dorn.

F. 1962--1. Royal College of Physicians' Report, March; 2. Luther Terry begins process of appointing group to study smoking and health, June; 3. Possibly Celebrezze said not role government to tell people to stop smoking, December; 4. local case in Kansas City, local coverage, John T. Ross v. Philip Morris.

G. 1964--Surgeon's General's Report on Smoking and Health released in January; movement toward warning label by FTC, leads to Jan. 1, 1966, warning label:

VI. Miscellaneous

A. African-American publications: articles in Ebony.

B. Miscellaneous items on addiction: Reed Smoot, 1929; various cites from news magazines; 1961 Science News Letter.

C. Items not available: educational films, other forms of visuals, broader range popular magazines, television and radio news reports.

VII. Conclusions

Only the deaf, dumb, halt, and idiots would not have known about this controversy, both over definition of cigarettes (addictive, etc.), and possible health consequences of smoking.

CRAFT

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BURTON OUTLINE DRAFT
HISTORICAL AWARENESS OF HEART/CORONARY ARTERY DISEASE & ADDICTION
IN RELATION TO TOBACCO

- I. Benjamin Rush - 1798 "Observations upon the Influence of the Habitual Use of Tobacco"
- Tobacco as a poison
 - Tobacco as an "enslaver"
- II. Nineteenth Century Pamphlets - background literature
- a. George Trask Thought and Stories for American Lad's or Uncle Toby's anti-tobacco advice to his nephew Billy Bruce
 - b. Henry Ford's "Little White Slaver" (Edison, Penny, Ward, Field)
 - c. Anti-Cigarette Movement begins to broaden as the Cigarette grows ()
Associated with: 1. Evil Women >a. mental
2. Bad Boys >b. moral
>c.physical
- III. John Harvey Kellogg - background
- a. Battlecreek Sanitarium
 - b. 20th Century American Health Guru
 - c. Two Primary Influences
 - 1. Good Health Magazine 1900-1955
 - ???articles dealing with heart disease
 - ???articles specifically use term addiction
 - ???articles use dopefiend, slave, etc.
 - ???articles deal with circulatory problems and disease
 - ??? articles deal with why athletes should not smoke
 - 2. JHK major influence on Industrial leaders such as Henry Ford, refused to employee smokers. "Little White Slaver" deals with heart disease.
 - d. Textbooks & Publications
 - textbook with O'Shea
 - Health Almanac
 - publications in popular science and medical journals

<years in which warnings>

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IV. Lucy Page Gaston - background & Kansas

- a. Anti-Cigarette League (International organization)
- b. Anti-Cigarette Legislation, Kansas State Supreme Court Case - 1907
- c. Baptist material (WCTU ??)

V. Kansas Legislation

- a. Kansas Supreme Court
 - Nov. 1920 State v. Nosmanupheld anti-cigarette sales law, "responsibility of the government to protect citizens for their good health"
- b. repealed in 1920s only because the WWI veterans lobbied to have the right to smoke

VI. Education - Mean's Report (laws & health ed materials)

- a. textbooks (health)
- b. school courses
- c. 1929 - Senator Smoot Resolutions - labeling law

VII. Newspapers/Magazine Articles - Time/Newsweek 50's/60's

-medical association & scientific community filtered into the local newspapers/magazines (audio-visual -TV?)

- a. 1954 Hammond & Horn Study 187,776 men (JAMA)
 - Numbers are increasing with lung cancer, however the statistics between smokers' various forms of heart disease is 62 times more than lung cancer(?)
- 1957 Group Smoking & Health Report - Science
- 1957 Blatnik Hearings - "Don't need labels everyone is aware that there is health hazard. Sen Wallace Bennett, Utah wants label, re: circulatory problems"
- 1958 Hammond & Horn Study Results of 187,776 men (JAMA)
- 1958 Dorn study of 200,000 Veterans
- 1958 Wynder study 7th Day Adventists
- 1962 Hammond study
- 1964 Surgeon General's Report
 - Chapters 11-15 heart disease

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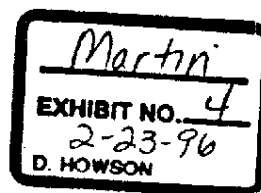
- b. Gallup Poll
-proves the awareness by questioning smoking
as a cause of heart disease

VI. Black Magazine/Newspaper Articles - Ebony/Jet

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A SAMPLING OF NINETEENTH & TWENTIETH CENTURY PAMPHLETS

Rush, Benjamin, "Observations Upon The Influence Of The Habitual Use of Tobacco Upon Health, Morals, and Property," Essays, Literary, Moral & Philosophical. Philadelphia: Thomas & Samuel F. Bradford, 1798.

"The progress of habit in the use of Tobacco is exactly the same as in the use of spiritous liquors. The slaves of it begin, by using it only after dinner-- then during the whole afternoon, and evening, afterwards before dinner, then before breakfast, and finally during the whole night."

19th Century Pamphlets

Fowler, Orin, A. M. (pastor of the 1st Congressional Church). Disquisition on the Evils of Using Tobacco and the Necessity of Immediate and Entire Reformation. Providence: S. R. Weeden, Market Square, 1833.

"Tobacco is in fact an absolute poison."

"...Tobacco burns out the blood, the teeth, the eyes, and the brain."

Shew, Joel, M. Tobacco: Its History, Nature, and Effects of the Body and Mind. circa 1840.

--tobacco makes the "rounds of the circulation."

"A nervous palpitation of the heart is often caused by the use of tobacco."

--tobacco has been the cause of heart disease in many instances. "...addicted to smoking..."

[N. Y. P. Y.]. "A Meditation On Tobacco," National Magazine. (November, 1885): 434-439.

"A slow poison verily!"

Higginson, T. W. "A New Counterblast," Atlantic. (December, 1861): 702.

"The injurious effects of excessive smoking, 'parital paralysis, ...narcotism of the heart'."

Hawes, Rev. J., D. D. Tobacco, The Bane of the Times. Boston: Hutchinson and Bullard, 1861.

"Snuffing, smoking, and chewing are bad habits, and we advise any gentleman who is not hopelessly addicted to either, to give it up."

"Tobacco: Its Use and Abuse," Cornhill. (November, 1862): 605-613.

Consequences of excessive smoking include angina pectoris, pulse increase, increase in heart's action, and nervous palpitation of the heart. Tobacco is poisonous to the blood and poisons the nervous system.

Griscom, John M.D. The Use of Tobacco and The Evils, Physical, Mental, and Social, Resulting Therefrom. New York: G. P. Putnam & Son, 1868.

Tobacco produces a "great debility of the circulation..." "The action of the heart is affected by it [tobacco] directly through the nervous system." "This same exhausting influence upon the nervous system, and upon the circulation of the blood, is observable in many habituated to it,..."

Draper, John C. "Tobaccophagoi and Tobaccophagism," Galaxy. (June, 1870): 751-757.

HEART-- "The physiological effects of tobacco are very varied. In its antispasmodic and narcotic or anodyne effect, it resembles lobelia, while its action on the heart is not unlike that of digitalis. In this latter respect, it has in some instances originated very puzzling phenomena, such as the permanent establishment of an irregularity in the heart's action, whereby every third or fourth beat is omitted." "He fancies that compared with such drugs his tobacco is innocuous, when in reality it contains equally if not more deadly poisons;..." Tobacco is considered a "deleterious drug."

Fry, Rev. B. St. J. "Our Fashionable Narcotic," Ladies' Repository. (January, 1870): 58-61.

Quoting a French paper by physician Claude Bernard "Nicotine, the poisonous principle of tobacco, acts as a heart poison." It was also "observed that it paralyzed the central organ of the circulation--thence sudden death."

--compares symptoms to angina pectoris
--reports over one hundred cases "respecting the pernicious action in the functions of the heart, caused by smoking tobacco." "This is now an accepted fact in medical science, and there is scarcely a practitioner who does not prohibit smoking, or, at least, who fails to recommend the greatest moderation in it to such of his patients as are liable to even the slightest perturbations of the functions of the heart."

Cowan, John. The Use of Tobacco vs. Purity, Chastity, and Sound Health. New York: Cowan & Company, Publishers, 1870.

"Tobacco, in all its forms, an active poison,..."

Wellcome, I. C. The Tobacco Plug and Cigar. 1875

Tobacco is the primary cause of many maladies and fatal diseases. It is charged with causing heart diseases, etc.

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Chase, Rev. B. W., A.M. Tobacco: Its Physical, Mental, Moral and Social Influences. By the author, 1878.

"The circulation of the blood is impeded by this worse than fatal narcotic." "...the Tobacco-user finds the pulsations of the heart slow, feeble, and irregular, and in other cases rapid and violent."

Livermore, Abiel Abbott, Anti-Tobacco. Carpenter, Rev. Russell Lant, A Lecture On Tobacco, and Witter, G. F., M. D., On The Use Of Tobacco. Boston: Roberts Brothers, 1883.

"The effect produced by tobacco on the heart is caused by its paralyzing effect on the minute vessels of the capillaries." "Dr. B. W. Richardson, F. R. S., says 'that smoking produces disturbances in the blood,...; on the heart, causing debility of the organ and irregular action...'. "Richardson declares 'that in the confirmed smoker there is a constant functional disturbance which extends to the blood, the stomach, the heart, the lungs, the brain, and the nerves.' John Quincy Adams, former President of the United States, after using tobacco in early life, and giving up the habit, remarked: 'I have often wished that every individual of the human race, affected with this artificial passion, would prevail upon himself to try, but for three months, the experiment which I have made, and am sure it would turn every acre of tobacco land into a wheat-field, and add five years to the average human life'."

20th CENTURY PAMPHLETS

Town, Charles B. "The Injury of the Tobacco and Its Relation To Other Drug Habits," Century. (March, 1912): 767-771.

--"slow poisoning"

--"every athlete knows its hurts the wind; that is, injures the ability of the heart to respond quickly to extra work."

--heightens blood pressure

Walsh, F. C., M. D. "The Truth About Tobacco," Technical World. (April, 1914): 180-185.

"...tobacco has been a frequent factor in the production of arteriosclerosis, or hardening of the arteries." "...arteries suffer particularly from this continuing poisoning."

French, Theo. F., A. M., D. D., and Higley, L. H. The Brown God and His White Imps. Butler, Indiana: L. H. Higley, Publisher, 1916.

"the use of tobacco injures the red corpuscles of the blood and greatly disturbs the action of the heart and blood vessels. "...the average pulse of those addicted to the use of tobacco is eighty-nine."

Kellogg, John Harvey. Tobaccoism. Battlecreek, Michigan: The Modern Medicine Publishing Co., 1937.

"Your blood-vessels are hardened and shrunken, greatly increasing the work of your heart, while the heart heart is degenerated and weakened, the usual effects of nicotine; and so a vicious circle is formed."

"Nicotine is a heart poison." Also uses term addiction.

Gottsegen, Jack J. Tobacco A Study of Its Consumption in the United States. New York: Pitman Publishing Corporation, 1940.

Tobacco affects the circulatory system. "Tobacco heart generally occurs in some who smoke immoderately."

"Other circulatory disorders have been attributed to the use of tobacco."

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DRAFT SUMMARY OF MEDICAL AND MEDICAL-RELATED ARTICLES DRAFT

(Chronological Listing)

Johnson, W. M. "Tobacco Smoking: A Clinical Study," Journal of the American Medical Association, 93 (1929): 665-667, 1909.

Dr. Johnson studied 150 patients and the effect of smoking on their blood pressure. He concluded that the effect on smokers is "practically negligible." He noted that the blood pressure of smokers is somewhat lower and may suggest the "possibility of some weakening of the myocardium after the prolonged use of tobacco." He also studied the "tobacco habit as an etiologic factor in angina pectoris." "Practically all authorities take it for granted that tobacco is a potent cause of angina, and are unanimous in advising its withdrawal in such cases." In concluding, he stated that tobacco smoking has no apparent permanent effect on the blood pressure, and he doubted whether tobacco plays a role in the etiology of angina pectoris.

Horton, Bayard T. "The Outlook In Thrombo-angiitis Obliterans" Journal of the American Medical Association, (1938): 2184-2189.

Dr. Bayard T. Horton focused on thrombo-angiitis obliterans, which he defines as a chronic occlusive arterial disease involving chiefly the extremities. Dr. Horton based his study on 948 patients, most of whom he observed at the Mayo Clinic. These patients were evaluated based on age, race, sex, and degree of smoking. He noted that 93% of these patients who had thrombo-angiitis obliterans were smokers and concluded that amputations are more frequent in smokers than in nonsmokers. He stated that "a number of investigations have held that tobacco is the primary etiologic agent in the production of this disease." He admitted that tobacco was not the cause of the disease in the majority of the cases, but that excessive smoking made the symptoms worse, and in some cases there were "numerous exceptions even to this rule."

[Media Coverage: Good Health Magazine, February 1939]

English, John P., Willius, Fredrick A., and Berkson, Joseph. "Tobacco and Coronary Disease," Journal of the American Medical Association, 115 (1940): 1327-1329.

Drs. English, Willius, and Berkson studied 1,000 cases with regard to coronary disease and the influence of tobacco smoking as it affects the disease. They assumed that smoking was not a cause but could influence the course of coronary disease. In conclusion they found that a greater incidence of coronary disease occurs among smokers younger than 50 than among nonsmokers. In the older age group "the possible harmful effects

of tobacco smoke are less evident than the other factors concerned in the production of atherosclerosis." "At this time," they also stated, "physicians are not yet ready to agree on this increasingly important subject."

[Media Coverage: Good Health Magazine, 1940]

Wynder, E. L., and Graham, E. A. "Tobacco Smoking as a Possible Etiologic Factor in Bronchiogenic Carcinoma," Journal of the American Medical Association, 143 (1950): 329-338.

In suggesting that smoking may play a part in bronchiogenic carcinoma, Drs. Wynder and Graham admit that "well controlled and large scale clinical studies are lacking." This study was an attempt to determine the factors that cause bronchiogenic carcinoma. They investigated 684 cases. Wynder and Graham cited other studies that emphasized a possible etiologic relationship between cigarette smoking and cancer of the lung. In conclusion Wynder and Graham stated that "excessive and prolonged use of tobacco...seems to be an important factor in the induction of bronchiogenic carcinoma."

[Media coverage: Newsweek 6/12/50]

Wynder, E. L., Graham, E. A., and Croninger, A. B. "Experimental Production of Carcinoma with Cigarette Tar," Cancer Research, 13 (1953): 855-864.

Drs. Wynder and Graham attempted to determine whether substances, namely cigarette tar, contained carcinogenic elements. They extracted tar substances from cigarettes and painted the "tar" on the backs of mice. In conclusion they stated that 44% of the mice with painted backs developed some type of carcinoma.

[Media Coverage: Life, 12/21/53, and evidence disputed in a letter to the editor by Charles Cameron, ACS medical director.]

Hammond, E. C., and Horn, D. "The Relationship between Human Smoking Habits and Death Rates: A Follow-up of 187,766 Men," Journal of the American Medical Association, 155 (1954): 1316-1328.

Hammond and Horn undertook this prospective study in late 1951 to determine if smoking affects death rates in relation to lung cancer. They reported that their information indicates that the death rates from coronary artery disease and cancer are higher in men who regularly smoke. Of the 708 "excess" deaths among smokers, 375 or 53% were caused by disease of the coronary arteries. They concluded that a cause-and-effect relationship existed between cigarette smoking and excess deaths from coronary

artery disease and lung cancer.

[Media coverage: New York Times, Reader's Digest, Newsweek, Time, Kansas City Kansan, and Emporia Gazette.

Cutler, Sidney J. "A Review of the Statistical Evidence on the Association Between Smoking and Lung Cancer," Journal of the American Statistical Association, 50 no. 270 (June 1955): 267-283.

In this review article Cutler reported, "there is a disagreement whether the evidence at hand warrants a conclusion that smoking and lung cancer are causally related." He went on to note that some studies have linked the rising rate of lung cancer to environmental factors, which include: increased use of cigarettes, increased atmospheric air pollution and factory waste, and increased occupational exposure to known cancer producing substances. Cutler does not attempt to assign a relative weight to each possible factor; however, he does place an emphasis on smoking based on recent epidemiological studies.

Strong, F. M., et al. "Smoking and Health: Joint Report of the Study Group on Smoking and Health," Science, 125 (1957): 1129-1133.

A study group organized by the American Cancer Society, American Heart Association, the National Cancer Institute, and the National Heart Institute. "The evidence of a cause-effect relationship [in relation to smoking and lung cancer] is adequate for considering the initiation of public health measures." Additional research is still necessary, however. Three statistical investigations show an association between tobacco smoking and reduced longevity; the study group believed this connection requires further research before the exact meaning can be determined. They also found that no clinical evidence that smoking per se has a causative role in cardiovascular disease.

[Media Coverage: Newsweek and Springfield Leader & Press]

Wynder, E. L., and Wright, G. "A Study of Tobacco Carcinogenesis, Part 1 (The Primary Fractions)," Cancer, 10 (1957): 255-271.

Another study attempting to determine whether tobacco tar was a cancer causing agent. Wynder sought to prove this possible connection by painting the backs of mice with tobacco tar. He and Wright concluded that "condensed cigarette smoke is carcinogenic to mouse skin."

[Media Coverage: Life 4/22/57]

52005 2234

Dorn, H. F. "Tobacco Consumption and Morality from Cancer and Other Diseases," Lancet, 275 (1958): 137-139.

This summary comment from the Seventh International Cancer Congress on Dorn's 290,000 veterans study, reported that the "close correlation of lung cancer with cigarette smoking cannot be lightly dismissed." The comment noted that lung cancer deaths were 63% higher among smokers than non-smokers. Along with other retrospective and prospective investigations Dorn's study argues for an association between smoking and lung cancer. It was also noted by Richard Doll, who commented on the study, that "hereditary tendencies and air pollution may be relevant factors."

Hammond, E. C., and Horn, D. "Smoking and Death Rates--Report on Forty-Four Months of Follow-up of 187,783 Men. Part 1 (Total Mortality), Part 2 (Death Rates by Cause)," Journal of the American Medical Association, 166 (1958): 1159-1172, 1294-1308.

Final reports on their prospective study, information presented earlier to the American Medical Association. Hammond and Horn conclude: "There is a high degree of association between total death rates and cigarette smoking..." Coronary artery disease was the cause of 5,297 (44.6%) deaths for all persons involved in this study. Cigarette smokers, claim Hammond and Horn, had a higher death rate (measured in "excess" deaths) from heart disease than did non-smokers. Hammond and Horn stated: "Coronary disease accounted for 52.1% of the excess deaths among cigarette smokers."

[Media Coverage: Newsweek 11/25/57]

Hammond, E. C. "Smoking and Death Rates--A Riddle In Cause and Effect," American Scientist, 46 (1958): 331-353.

Reviewing his prospective study, Hammond asserted that "it is virtually certain that an association exists between cigarette smoking and coronary artery disease." He also stated: "The very large number of excess deaths from coronary artery disease in cigarette smokers was perhaps the most important finding in our prospective study." There was no evidence at present, however, that smoking influences the occurrence of atherosclerosis of the coronary arteries. Hammond also emphasized that in any of the diseases possibly linked to smoking, there were other factors at work, but he did not define.

Dorn, Harold, F. "Tobacco Consumption and Mortality From Cancer and Other Diseases," Public Health Reports, 74 (1959): 581-593.

Dorn, in this prospective study carried out in cooperation with the National Cancer Institute, summarized mortality rates of about 249,000 veterans (usable replies) holding life insurance policies with the U. S. government. He concluded that the death rate from all causes was 32% higher in men who used tobacco than those who had never smoked. "The leading cause of death among the policyholders is coronary heart disease," Dorn stated. He also wrote: "The death rate from coronary heart disease among regular users of cigarettes only is 63 percent higher than the rate for nonsmokers." In another measure Dorn asserted that 45% of the excess deaths among smokers were related to heart disease.

[Covered in New York Times, Time, Springfield Leader & Press]

Hammond, E. C. "Smoking in Relation to Heart Disease," Journal of Public Health, 50 (1960): 20-26.

Hammond reviewed recent epidemiological studies, beginning with Raymond Pearl's longevity study in 1938. Hammond theorized that if the lungs are damaged from smoking cigarettes, then this damage could cause a strain on the heart. Among other possible hypotheses, Hammond proposed "that cigarette smokers tend to have certain other habits; and that it is these other habits which account for their high death rate from coronary artery disease."

Spain, David M., and Nathan, Daniel J. "Smoking Habits and Coronary Atherosclerotic Heart Disease," JAMA: Journal of the American Medical Association, 177 (1961): 119-124.

At the outset Drs. Spain and Nathan stated that "no definite conclusions" have been made in the possible causal relationship between cigarette smoking and cardiovascular diseases in general. In their study of 3,000 males they observed a "statistical association" between heavy cigarette smoking and the occurrence of coronary atherosclerotic heart disease. They stated that an open question still remains as to whether this statistical association indicates a causal relationship in the development of coronary atherosclerosis. In conclusion they reported that "there is suggestive evidence that cigarette smoking may play a role in the precipitation of acute myocardial infarction in individuals who already have advanced coronary atherosclerosis."

Hammond, E. Cuyler. "The Effects of Smoking," Scientific American, 207 (1962): 39-51.

Hammond reviewed the history of statistical studies with respect to the possible relationship between tobacco and harmful

effects to the body. In his summary of the evidence Hammond concluded that, in his opinion, "the inhalation of tobacco smoke produces a number of very harmful effects and shortens life span of human beings." He cited Wynder and Dietrich Hoffmann who had found a type of filter that removed "almost all the phenols." He compared more recent statistics to the conclusions of Harold Dorn's veterans study. He believed that "research should be undertaken to determine the effects of various constituents of cigarette smoke and to find means of removing those that are most harmful."

Wilens, Sigmund L., and Plair, Cassius M. "Cigarette Smoking and Arteriosclerosis," Science, 138 (1962): 975-977.

Drs. Wilens and Plair asserted that cigarette smokers may have other characteristics, such as diabetes, hypertension, hypercholesteremia, and obesity. The results of their study indicated "that an association exists between smoking practices and the development of arteriosclerosis or lesions resulting therefrom, ... is at best tenuous and inconclusive."

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1954

MEDICAL REPORT--

Journal of the American Medical Association

August 7, 1954 E. Cuyler Hammond, Sc.D. and Daniel Horn, Ph.D. report in JAMA on a prospective study on 187,766 men age 50-70 that began in 1951.

DISSEMINATION OF INFORMATION TO THE PUBLIC--

NEW YORK TIMES

June 22, 1954 Front page of the New York Times reports "Cigarettes Found to Raise Death Rate in Men 50 to 70" Reporting on the Hammond and Horn Study finding that the death rate from heart attacks and coronary artery disease was 50% higher in smokers than non-smokers. Hammond and Horn stated "it seems probable that nicotine is at least partially responsible for the findings in relation to disease of the coronary arteries."

June 27, 1954 Reports on the Hammond and Horn Study presented at the 103rd American Medical Association Convention. The preliminary report claims that cigarette smokers age 50-70 have a higher mortality rate and die mainly from cancer and heart disease. "The effect of nicotine in coronary heart disease is fairly clear."

June 29, 1954 Dr. Charles Cameron, ACS Medical & Scientific Director of the American Cancer Society sees "a clear cause-and-effect relationship between cigarette-smoking and cancer of the lung and coronary heart disease,..."

July 27, 1954 Hammond reported at the Sixth International Cancer Congress in Sao Paulo that he was "more convinced than ever that cigarette smoking had an important influence on deaths not only from lung and other cancers but from coronary heart disease." While lung cancer appeared to be on the increase, with 22,000 deaths reported, coronary heart disease killed approximately 500,000 in the United States last year.

October 23, 1954 James Adams, Vice Chairman ACS, wants to have a conference of federal and voluntary public health agencies to study health problems now being associated with smoking, based on new evidence involving heart and arteries.

READER'S DIGEST

April 1954 "How To Stop Smoking" When you smoke "your blood pressure goes up." "...blood vessels undergo a constriction." "Tobacco smoke retards these natural processes by constricting your arteries, slowing down the blood circulation."

NEWSWEEK

June 28, 1954 Surprisingly, a report presented at the San Francisco "offered statistics to show that the principle cause of death among heavy smokers was not lung cancer, as previously suspected, but heart disease." Nicotine was reportedly a probable cause for diseases of the heart and coronary arteries.

TIME

July 5, 1954 E. Cuyler Hammond reported at the AMA convention that heavy cigarette smokers die younger than non-smokers, "mainly of heart disease and cancer..." Reportedly the death rate from heart disease and cancer among moderate smokers was also significantly higher.

Kansas City Kansan

June 22, 1954 "Tobacco Shares Break Sharply" As a result of a report (Hammond & Horn) presented at the AMA convention the New York Stock exchange reported a drop in tobacco shares ranging in as much as dollar.

Emporia Gazette

July 2, 1954 "Smokers Still Puff Away Despite Recent Medical Reports on Cigarettes"

October 20, 1954 Dr. Hammond stated that it would be impossible to prove conclusively whether smoking is or is not a factor in cancer or heart disease. In Hammond's address to the ACS he urged the invention of harmless tobacco which he felt would take less time than proving the present tobacco is a specific factor in disease.

November 11, 1954 Reports Dr. Ochsner's recently published book Smoking and Cancer, a Doctors Report. He claims that cigarettes are a cause in lung cancer and heart disease.

November 12, 1954 "Cancer Study Found That Smoking Led To Increased Risk of Heart Troubles" The Hammond and Horn study found that "the effect found on the heart is much more important than the effect found in lung cancer..."

Kansas City Star

November 11, 1954 The study by Hammond and Horn reports that heart disease was more significant than lung cancer since heart disease is the more frequent killer. "It has been long known that smoking can make tiny blood vessels narrow down, kick up pulse rate, and blood pressure."

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1957

MEDICAL REPORT--

June 1957 Study Group on Smoking and Health

The results of a study that began in June of 1956 on Smoking and Health appeared in Science in June 1957. Conclusion more research is needed in this area.

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Newsweek

April 1, 1957 Reports on a story in The Atlantic Constitution that pre-released results of the study on Smoking and Health.

Springfield Leader & Press

March 22, 1957 Reports on The Atlantic Constitution "exclusively obtained" story regarding the study on Smoking and Health. The group claimed to establish a positive cause and effect link between cigarette smoking and lung cancer.

MEDICAL REPORT--

Final Report of the Hammond & Horn Study given at the American Medical Associations 106th Annual Meeting in 1957

DISSEMINATION OF INFORMATION TO PUBLIC--

Newsweek

June 17, 1957 Hammond and Horn presented their final study at the 106th Annual Meeting of the AMA. Reporting that smoking is believed to be one of causes of coronary artery disease.

Kansas City Star

June 4, 1957 The final reports on smoking habits presented by Hammond and Horn at the AMA convention "showed a clear-cut association between cigarette smoking and several other ailments, notably coronary artery disease, the doctors reported." 52.1% of excess deaths among the smokers studied were attributed to coronary artery disease.

Kansas City Star

June 6, 1957 Tobacco reportedly began recovering after the "inaction" it suffered due to the "impact of the American Cancer society's adverse report" two days ago.

1957

**July 1957 Surgeon General Burney's Response to Report
(Smoking & Health Group & Hammond & Horn Study)**

Springfield Leader & Press

July 12, 1957 Surgeon General Burney comments on the Study on Smoking and Health have "reported that lung cancer occurs much more frequently among cigarette smokers than among non-smokers,..." Burney's statement was "There is an increasing and consistent body of evidence that excessive cigarette smoking is one of the causative factors in lung cancer."

Springfield News - Leader

July 14, 1957 Surgeon General Burney made an official government statement regarding "excessive smoking."

Kansas City Kansan

July 15, 1957 Surgeon General Burney issued a statement declaring that "excessive cigarette smoking is one of the causes of lung cancer."

GOVERNMENT PROPOSALS--

July 17, 1957 Wallace Bennett proposes Warning labels

DISSEMINATION OF INFORMATION TO PUBLIC--

NEW YORK TIMES

July 17, 1957 Senator Wallace Bennett of Utah proposed a smoking warning on cigarettes that would state "Prolonged use of this product may result in cancer in the lung, heart and circulatory ailments, and in other diseases."

GOVERNMENT INQUIRY--

July 1957 Blatnik Hearings

July 23, 1957 Surgeon General Burney testified in the Blatnik Hearings that "...the facts have been furnished to the public through the press..." "Our position is that we have informed the public through the excellent coverage of the press, radio, and TV." "...I think we have gone as far as we should go at the present time." "This information had been pretty widely dispersed."

52005 2242

1957

PUBLIC AWARENESS--

Gallup Polls

JULY 21, 1957

POLL (6/27-72/57) (Pre-Blatnik)

"Did you happen to hear or read about the recent report of the American Cancer Society reporting the results of a study on the effects of cigaret smoking?"

77%---Yes 23%---No

"What is your opinion--do you think cigaret smoking is one of the causes of cancer of the lung?"

50%---Yes 24%---No 26%---Undecided

July 24, 1957

POLL (6/27-7/2/57) (Pre-Blatnik)

"What is your opinion--do you think cigaret smoking is one of the causes of heart disease?"

38%---Yes 34%---No 28%---Undecided

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1958

MEDICAL REPORT--

CALIFORNIA MEDICINE

Ernst L. Wynder & Frank R. Lemon presented a study of Seventh-Day Adventist in April 1958 to the California Medical Association. The article appeared in California Medicine in October 1958.

DISSEMINATION OF INFORMATION THE PUBLIC--

TIME

May 5, 1958 Reporting on the Wynder & Lemon study of the Seventh-Day Adventists. Wynder and Lemon attempt to prove that smoking & alcohol were contributing factors in disease. Claiming "that smoking, though not causing atherosclerosis as such, adds to the already damaging effect of atherosclerosis upon the circulatory system."

READER'S DIGEST

August 1958 "The Case of the Wise Abstainers" An article reporting the Wynder and Lemon study on the Seventh-Day Adventist

NEW YORK TIMES

April 28, 1958 "Adventists Found To Resist Cancer" Reporting that the Seventh-Day Adventists due to religious abstentions of tobacco and alcohol have "...90 per cent fewer lung cancers and 40 per cent fewer heart attacks than other men."

Medical Report--

The Dorn Report is presented to the Seventh International Cancer Congress in July 1958.

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NEW YORK TIMES

July 6, 1958 "Smoking Report Summary" Reports the findings of Harold F. Dorn in a study of veterans. Dorn is said to support earlier findings that claimed "a statistical relationship between death rates and smoking."

TIME

July 14, 1958 Reporting on the Seventh International Cancer Congress in London. Gives a brief summary of the Dorn Report. "...Increase in early deaths among heavy cigarette smokers is mainly from heart and artery disease."

Springfield Leader & Press

July 7, 1958 Reporting on the Dorn Study that examined "220,000 veterans of American wars." Dorn is expected to warn that "cigarette smoking is dangerous." (2 articles)

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1962

MEDICAL REPORTS--

March 1962 Britain's Royal College of Physicians published a report on a two year study that stated "cigarette smoking may be a contributing cause of death from a number of diseases besides lung cancer."

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NEW YORK TIMES

March 8, 1962 Reporting on the Royal College of Physicians' report. The study states that "cigarette smoking...probably contributes to the development of coronary heart disease."

March 13, 1962 Reporting the heavy demand for the publication of Smoking and Health put out by the Royal College of Physicians on their recent study.

KANSAS CITY STAR

March 7, 1962 Reports on the Royal College of Surgeons Committee's two year study of case histories. The conclusion of the committee were that "cigarette smoking may be a cause of death..."

March 12, 1962 "British Fight On Cigarettes" Report of the Royal College of Physicians released last week "stating that cigarette-smoking causes lung cancer." The reports also made the recommendation that the cost of cigarettes be made prohibitively high by taxation.

GOVERNMENT ANNOUNCEMENT--

June 1962 Surgeon General Luther Terry announces the appointment of a committee to study the effects of smoking on health.

NEW YORK TIMES

June 8, 1962 "U. S. Health Service To Study Cigarettes" Report of the Surgeon General Terry appointment of an advisory committee "to study the effect of cigarette smoking on health."

KANSAS CITY KANSAN

October 29, 1962 "Tobacco Study Is Under Way" Reporting that Surgeon General Terry is forming a committee of ten medical experts to investigate the "nature and magnitude of the health hazard" of tobacco.

1962

GOVERNMENT ANNOUNCEMENT--

December 1962 Anthony Celebrezze the U. S. Secretary of Health, Education and Welfare stated that "I firmly believe that it is not the proper role of the Federal government to tell citizens to stop smoking."

NEW YORK TIMES

December 3, 1962 "Celebrezze Wary On Smoking Issue" Reporting on the comments of HEW Secretary regarding the recent committee put together to examine the health effects of smoking on health. Celebrezze stated that "the findings should be laid before the public for it to decide what action to take..."

KANSAS CITY KANSAN

December 3, 1962 "Says Smoking Ban Not Up to U. S." The Secretary of HEW stated that "it was proper for the government to get an expert committee to determine" if smoking is a health hazard, but the findings should be laid before the public to make it's own decision. "You can kill yourself by overeating, overdrinking and other overindulgences," Celebrezze said. "Prohibition did not work. And we don't prevent the sale of rat poison although it can kill humans."

EMPORIA GAZETTE

March 8, 1962 "Smoking is Linked with Deaths from Number of Diseases" Britain's Royal College of Surgeons reported after a two-year study "that cigarette smoking may be a contributing causes of death from a number of diseases besides lung cancer."

LOCAL TRIAL--

On the local level in June and July of 1962 there was extensive daily coverage of a local trial in the Kansas City Star and the Kansas City Times.

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1964

GOVERNMENT ANNOUNCEMENT--

Surgeon General Report released claiming link between cigarette smoking and cancer.

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NEW YORK TIMES

January 11, 1964 Front Page of New York Times "Cigarettes Peril Health, U. S. Report Concludes, 'Remedial Action' Urged" Surgeon General releases report that "the use of cigarettes contributed so substantially to the American death rate that 'appropriate remedial action was called for'."

NEWSWEEK

January 20, 1964 The Surgeon General released a 387-page report entitled "Smoking and Health"

January 17, 1964 The Government report published a 150,000-word report that declared "Cigarette smoking is a health hazard of sufficient importance in the U. S. to warrant appropriate remedial action."

KANSAS CITY KANSAN

January 12, 1964 "Cigaret Link to Disease" Surgeon General's appointed committee released a 150,000-word report which expressed judgment the "cigarette smoking contributes substantially to mortality from certain specific diseases and to the overall death rate."

KANSAS CITY TIMES

January 13, 1964 "Action Planned by FTC" FTC announced that they are studying cigarette labeling and advertising and will "determine the remedial action which should be taken in public interest."

KANSAS CITY STAR

January 12, 1964 "FTC Will Move On Cigarettes" Effort is being made to determine what "remedial action" will be taken on "labeling promise."

EMPORIA GAZETTE

January 11, 1964 "Nation Gets New Report On Smoking" "...male cigarette smokers have a higher death rate from heart and blood vessel disease than non-smoking males, it is not clear as yet that smoking is the cause."

January 11, 1964 "Several Diseases Mentioned in New Report on Smoking" Mentions Buerger's disease and possibility of amputation.

January 13, 1964 "All Eyes Are on the Smoker This Week" "There was an association--but not yet a proof of cause--between cigarettes and heart and blood vessel disease, and peptic ulcers."

January 17, 1964 "Anti-Cigaret Laws Pondered By State, Local Governments" A "controversy inspired some state and local governmental bodies to consider anti-cigarette action officially" after the recent Surgeon's General Report.

January 25, 1964 "Conditions Causing Cancer Often Correct Themselves" "Members of an Emporia panel on smoking agreed...that severe laws are not the way to prevent youngsters from taking up the cigaret habit." "They all felt the answer was education..."

January 29, 1964 "Cigaret Sales Are Banned in Some Areas: Hospitals Lead" Several states are banning the sale of cigarettes in some government buildings and hospitals. Associated Press survey reports "that the effort by government officials to discourage smoking by educational campaigns are fairly widespread."

Much debating ensued over the Surgeon General's report; newspaper, radio, and television coverage was extensive. This is only a partial sampling.

52005 2249

Case File

David Burton

File Opened: August 11, 1995

Background Information:

Born 1935, apparently at Emporia, Kansas

Attended local schools, inc. junior high and high school into the 10th grade, at which point dropped out to work (at about age 15)

Involved athletics, played baseball, ran track

From about 1955-'60, lived in Springfield, Missouri

From about 1961-'67, lived in Emporia, Kansas

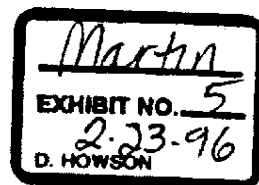
From about 1967-'79, lived in Los Angeles, California

Since about 1979, lived in Overland Park, Kansas, suburb of Kansas City

Smoked 44 years, apparently Camels and others (?), developed peripheral vascular disease, and had legs amputated. Claims caused by smoking. Case in Federal Court, Kansas City.

Questions involved include alleged addiction without knowledge and role played in development circulatory disease.

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David Burton Case--Research Items

- 1). General background, smoking awareness and heart disease.
 - A). Pre-1950, what generally known Kansas and more generally;
 - B). 1950 forward, state of public general knowledge
- 2). Education, Instruction, and Textbooks: Means Report on Kansas
- 3). Role Models: Coaches and negative commentary effects of tobacco
- 3). Local newspapers: PHR, Emporia Gazette, Kansas City paper, African-American papers Kansas City and Los Angeles (?)
- 4). National newspapers: New York Times, what reporting
- 5). Other outlets, magazines, periodicals: Henry Luce and Time (see Health columns), other weeklies; African-American magazines
- 6). Popular culture items, plus others that might develop.

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Steve Kacy-pushin
8/18/95 2:00 p.m.

~~11/18/95~~
Filed 1994 - smoked 44 years - (David
J. Hunter)
legs amputated.

March - Aug. 1995 - little preparation.

Fed. court Kan. City, Kansas.

Apr. 2, 1996 - popped Aug. 2, 1995.
expect case to go to trial.

Wolfeprin, Paul K.

Issues:

- 1). awareness, esp. heart
disease, other circulatory problems.
- 2). addiction (cand cigarettes).
agitated.

Born 1935 - Organ 15-16 (1950-57).

with grade Emp. J. High
played baseball / track.

Em. cigarette (Mm. Allen White).

Nuclear track 55-60 - Springfield, Mo.

61-67 - Emporia

Examiner? 67-69 - L.A. Angeles

79 - Overland Park, Kan.

Rich Means, Kansas report.

Friday, 15th. / possible

Meeting Dallas, J.D.R.P, Aug. 25, 1995

Trial date / August 1996

Designation date / early 1996

J. Moore
J. Kaczynski.

Double focus: question of addiction
question of heart disease
→ issue of death

Two distinct projects:

Baptist
angle

1). Pre-1950 (follies? stuff)

2). 1950 forward. NYT, local
newspapers, textbooks, magazines
and periodicals, political

→ did read Time (document)?

→ biography (Henry Time.)

→ Means

→ PHR ^{study} ~~modern~~ (bookish)

→ Katie to Cleveland?

Link to NYT
under Smoking
and Health category

→ Athletic angle. - did message get through?
Clay + fat / possible heart paper
Kansas City.

→ local black paper

C). N.Y. Times

-1-

- (5) - June 6, 1953 - Heart expert lists "reasonable
cautions." Avoid heavy tobacco use to help
avoid hypertension. Prof. Paul White reported
at 102nd AMA Annual meeting.
- (4) - June 27, 1954 - on Hammond-Horn study,
report 102nd AMA convention. Cig. smokers age
50-70 have higher mortality rate, die mainly
cancer, heart disease. (see also same on June
22, 1954).
- (14, 15) - June 29, 1954 - ^{Charles} Dr. Cameron, ^{ACS Mod. Soc. director,} also age, see
link described by Hammond (Hon. Nat
other cancer links
- (15) - July 27, 1954 - ~~the~~ Hammond of ACS at
Natl. Cancer Congress "more convinced than
ever" cig. smoking strongly influence cancer, and
coronary heart disease.
- (16) - Oct. 23, 1954 - James Adams, vice chm. ACS,
wants policy conference of federal and
voluntary agencies to study health
problems smoking, latest new evidence
involving heart and arteries.

52005 2254

(25) Sept. 6, 1955 -- Cig. linked to heart disease. new study by Dr. Hoffman, U.C. Berkeley, men who smoke regularly run a 40% greater risk of dying of heart disease.

~~(26) Feb. 10, 1956~~

(30) July 14, 1956 -- Early Chd. lead to Heart Disease - new method for measuring effect of cig. smoking on the heart.

(33) March 23, 1957 -- Cites findings study group on smoking and heart, warning Irish's heart.

(35) June 5, 1957 - TIRC statement denies link between smoking, cancer, and heart disease "The causes of ... heart disease are not yet known to medical science."

(35) June 5, 1957 -- Reports final results Hammond & Horn. TIRC restated its position. Prints Text Hammond (Ham).

(38) July 17, 1957 -- Smoking warning urged by Sen. Wallace Bennett (Utah): "Prolonged use of this product may result in cancer in lung, heart and circulatory ailments, and in other diseases."

(16) Dec. 9, 1953 - Lung Cancer Risk Laid To Smoking → names four studies. Last one says Dr. Irving Wright's report says use of tobacco may mean life or death for persons with circulatory diseases.

(5) Sept. 15, 1953 - Effect Smoking on Blood Vessels. Annual Cong. Intl. College Surgeons, Dr. Morris Friedell (Loyola) says smoking produces alteration of blood circulation 50% normal subjects. Also discusses constricting vessels.

Also, articles high blood pressure (articles)

Dec. 9, 1953, cited above (6)

Dec. 26, 1954 (20).

236 articles avail. NY Times 1950-57.

16 mention, deal with smoking (heart disease)
 $\frac{16}{236} \approx 6.8\%$ articles touch on subject.

focusing cancer, raising awareness
 because heart disease link already
 widely, commonly well-known.

D.) Local newspapers :

A) Reader's Digest :

Irving Fischer - Nov. 1924 - cites
 "Cigarette tobacco is a 'heart poison.'
 'It impairs the heart.' etc. Cites
 New Eng Life Ins. Co. (1911) won't
 insure heavy smokers.

Gene Tunney, Dec 1941 "Mistake
 Breakfast, or the Hour Count,"
 talks about heart rates and
 athletes ??

Paper William Riis, Jan. 1950 "How
 Harmful Are Cigarettes?" - speaks
 about heart disease and Burger's disease.

B). Popular Magazines, Journals :

not yet checked

52005 2257

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in

HUMPHREY

9/7 → Boston

→ Bennett warning (1957)
drug. genl. Abstract (1957) } pp. 121-23

→ 135-58 (sp.) -- oil with possibly salt,
not related to addiction (separate question.)

→ P. 154 - Time Mag.

→ P. 170 - did J. Wayne even smoke cigarettes?
P. 185,

Dr. Shelley Bookspan
Environmental Consultants, Inc.
5290 Overpass Road, Suite 220
Santa Barbara, California 93111-2051

October 21, 1995

Dear Dr. Bookspan:

My purpose in writing is to let you know that I've received the newspapers (Emporia Gazette, Springfield News - Leader, etc.) in relation to the David Burton case. Two packages have arrived so far.

If more materials are forthcoming, I would appreciate receiving copies. Meanwhile, take good care, and please accept my best regards.

Cordially,

James Kirby Martin

52005 2259

Professor Richard K. Means
2208 Heritage Drive
Opelika, Alabama 36801

October 21, 1995

Dear Professor Means:

My purpose in writing is to let you know that "The Kansas Report" arrived at my office yesterday. I've not yet had a chance to look at it in detail, but the report appears to be very comprehensive. I'm sure that it will be helpful.

I hope that you are now fully recovered from the hurricane. Many thanks again for sending me a copy of the report. Take good care, and with best regards.

Cordially,

James Kirby Martin

52005 2260

Professor Richard K. Means
2206 Heritage Drive
Opelika, Alabama 36801

November 4, 1995

Dear Dick:

Thanks very much for sending me a copy of your letter to Allen Purvis. My feeling is that this particular course of study document helps pull a lot of themes together. Having the whole pamphlet may well prove to be very important.

Again, many thanks for your assistance. With very best regards.

Cordially,

James Kirby Martin

52005 2261

Memo to: Paul Koethe

From: James Kirby Martin

Date: November 21, 1995

Subject: Uncle Toby's Anti-Tobacco Advice

At our meeting last week, I mentioned that we were trying to get a copy of this 1852 volume by the Rev. George Trask. We finally succeeded, thanks to interlibrary loan and the Bowdoin College Library. I've included two copies in this package, one for you and one for Steve. Also, since the volume just came in yesterday, I haven't had time to read it yet. A quick scan, however, suggests that the material may be useful (see pp. 160-61, 176-77, for example).

Meanwhile, we have a lead on getting a copy of James I's Counterblast to Tobacco, but the volume in which it appears is not in our library. As soon as interlibrary loan delivers, I'll get copies in the mail to you.

Take good care, and very best to you and Steve.

52005 2262

produced by RTRC
in HUMPHREY

Mr. Paul Koethe
Jones, Day, Reavis & Pogue
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114

December 21, 1995

Dear Paul:

Please substitute the updated draft pages contained herein for those we handed you on the same subject at our November 16 meeting. I've included two sets, one for you and one for Steve.

If you have questions, let me know. Take good care, and enjoy that snowy weather!

Cordially,

James Kirby Martin

52005 2263

NOVEMBER 16, 1995 MEETING
DRAFT -- SUMMARY AGENDA

1. Counterblaste to Tobacco King James I
-what is dissemination of pamphlet
2. Scientific Argument - when does information become
scientific? Get Berkeson with Mayo Clinic- Good Health 1940
3. Why was there a ban on cigarettes in Kansas 1909 & why was
it repealed/modified in 1927. Get Kansas history. Context
Reasons: veterans
4. Can we get JHK Almanac?
5. Although Lung cancer theme is main issue in the 50s, heart &
circulatory disease runs throughout and is always there.
6. Ayers Guide to Periodicals Tracks regional circulation
figures
7. Wynder/Graham study---> Influences(triggers) Hammond study,
etc.
8. Gallup Polls and others. Get off internet University of
Connecticut - Roper(Online)
9. 1955 "See It Now" video
10. Ross Case was filed sometime in the fifties. Covered in
Time or Newsweek 1964? Check.
11. Professor McKeever - Kansas City University Study of 1200
boys in 1910 in NYT. February 28, 1910
12. 7th Day Adventist Clinics, Kansas VA hospital quit giving
cigarettes to patients, Overland Park bans vending machines,
University of Kansas bans the sale of cigarettes.
13. Finish Review Emporia Gazette 62, 64
14. Finish Summary years of 62 & 64

52005 2264

MEMO to: JKM

From: KEH

NOTES: January 5, 1996 Meeting

1. January 15 - February 7, 1996 is the proposed deposition time frame. Look into dates available.
2. Compensation and hourly fee may need to be included in the report. This will be determined immediately before submitting the report.
3. Why is Lucy Page Gaston relevant to the Burton Case?
 - Anti-Cigarette League stressed education
 - goal was to prohibit smoking
 - Gaston spent a great deal of time in Kansas
 - Prohibition laws affect what the schools are teaching
 - Social Memory
4. Two points on the Dorn Study:
 - date (1958/1959)
 - number of veterans (290,000)
5. Heart disease all encompassing meaning?
 - cardiovascular, circulatory, peripheral vascular, arteriosclerosis, atherosclerosis
6. Articles in New York Times and other places report reactions of persons on the street re. 1964 SG report. Check?
7. The rapid shift to filter-tip cigarettes. Are you sure of dates of shift? (check Sobel, other sources).
8. Deadline for report likely by the 11th or 12th of January.
9. As of now, full source list does not need to be submitted with the report, but will likely be made available soon. Include copy with final version.

52005 2265

MEMO TO: JKM

From: KEH

RE: NOTES DECEMBER 19, 1995 MEETING

1. Why did you look at medical articles?
Medical articles are in relation to what the press is saying or had to do with heart disease.
2. Instead of large source list, should you list only categories, ie. you have looked at a large number of articles from the 19th & 20th Century.
3. Regarding miscellaneous news clippings, do they seem to be consistent with your findings re. other papers?
Remember to add Life Magazine to report, since you read articles on mice and tumors.
4. What about newspapers? You should probably list specific years.
5. Government documents - Kansas banned cigarettes & advertising. The first in 1909, later in 1927. There were modifications in 1915 & 1917. Were there other changes.
High School education - define Jr. High as through 9th grade. Need to add that health education requirements continued through high school.
6. Check to see whether Wynder & Graham funded by the ACS in the early 1950s?
7. Did Charles T. Ross file law suit in 1954 or was it later?
8. What was the circulation of Life and other magazines? (Ayers)
9. Reader's Digest, did it run extensive articles before 1950?
10. Consumption figures for 1950s? Double check where you got them.
11. How were articles of 1920s to early 1950s disseminated to the public?

52005 2266

12/14/95
Paul Koethe - come down on 19th

→ Burton deposition

- out there, general awareness
- he was aware too
- advertising (drowned out)
people hearing, understanding it,
not being duped.
polling.

- 1st draft. statement by Dec. 12.

52005 2267

13 Dec 1975

reviewer deposition: two wives, Ora Lee, June
(2nd apparently spousal abuse); (47) arrested,
committed five times about; (48) went up Emporia
police station; (70) Sit and run, California; (71) spots,
Baltimore, Jack; (84-86) Camels are good for you.
(110) ⁽¹⁵¹⁾ Time or spots magazines; man named (113-14);
coach named (114-15); (117) coffin nails; (121) warnings
labels, none, but not related legs; (123) didn't know
could cause heart disease; (128) did read Emporia Gazette;
drugs-addicted ⁽¹¹⁵⁾ (132); (141) ⁽¹⁴²⁾ did smoking 3 or 4 a day;
father died alcoholism (150); drunk and Q02;
addicted to beer (159); addicted to money (160); (161).
would have stopped smoking double down pipe. would
quit him; Emporia advertisement (161); not a big
reader (179); injury not related (172-83); quit drinking
(193); never told high blood pressure (311); told low
weight (32-43); against filters (337-38); (346) no
knowledge school; could have stopped (342)

Paul Koetter - 1/8/95 - 11:40 A.M.

Feb. 1, Feb. 2, 3 (at meeting) - Paul Kacy.
P. Koetter

Jan. 23 - Tuesday } Koetter
24 - Weds. } Kacyinski

→ mechanics ↑ looking more
→ intro ↓ submit sources list.

←-----→

Compensation statement

- just before last paragraph.

I have been compensated at a rate of
\$ per hour for the time I have time
spent working on this project, whether
preparing and submitting materials and
preparing this report.

curriculum vitae

→ take out references supplement or
go full version. ?

→ bibliography. ?

Paul Koethe - 1/3/96 219-899-1086
HOME

Meet Airport Marriott - 9:00 A.M.

add two things

(1) paragraph on sources
reviewed.

summary
generic { In forming my opinions, I have
reviewed a wide assortment of
hist. materials, including following:
various state laws, various
court decisions, school texts
and curricula guides.

(2) Burton deposition

(B) My opinions are also based on
my education and experience
as a historian - get idea.

(C) Only other item -> short
reference to Burton. peraps.
This information was available
in the areas where Dr. Burton
resided. No one should have
prevented him from leaving
access to this information.

52005 2269

Expects
-Martin, J.
8444:abg
03-25-96

Memo To James Martin File:

Re: Burton

We only have exhibits 1-5 from Dr. Martin's deposition. Greg Leyh made copies of the remaining exhibits (6-116), but Sydney did not want copies since Dr. Martin has the originals.

Dawn M. Weed
(214) 969-5220
5-5220

March 25, 1996

cc: Joan Radigan

produced by RJRTC

DEPONENT:

CASE NAME:

EXHIBIT NO:

in

HUMPHREY

DEPOSITION EXHIBIT

NOT RECEIVED

James Kirby Martin

David And Ora Bueton

6 - 116

52005 2271